Nos. 17,878 and 17,879

IN THE

United States Court of Appeals

FOR THE SIXTH CIRCUIT

No. 17,878

GEORGE RAMSEY; LEON NUNLEY, d/b/a LEON NUNLEY COAL COMPANY; PAUL GIBBS, d/b/a PAUL GIBBS COAL COMPANY; LOIS HALL TRAVIS, Administratrix of the Estate of W. J. Travis and J. H. GRAHAM, d/b/a NINTH WEST COAL COMPANY; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G COAL COMPANY; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Administratrix of the Estate of W. J. TRAVIS, d/b/a M & T COAL COMPANY; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a EDWARD NUNLEY COAL COMPANY; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a TRACY CITY COAL COMPANY; HENRY WILLIS FLYNN, d/b/a WILLIS FLYNN COAL COMPANY; H. W. FLYNN COAL COMPANY, INC.; HOWARD HIGGINS, d/b/a HOWARD HIGGINS COAL COMPANY; HOWARD HIGGINS COAL COMPANY, INC.; MARSHALL MEEKS,

Plaintiffs-Appellants,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

No. 17,879

TENNESSEE PRODUCTS AND CHEMICAL CORPORATION,

Plaintiff-Appellant,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant-Appellee.

Appeals from Final Judgments of the United States District Court for the Eastern District of Tennessee, Southern Division

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APPENDIX FOR DEFENDANT-APPELLEE

VOLUME I

Pages 1b-448b

BARRETT PRINTING COMPANY, CHARLESTON, W. VA.

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APPENDIX FOR DEFENDANT-APPELLEE

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IN THE

United States District Court

EASTERN DISTRICT OF TENNESSEE

SOUTHERN DIVISION

Civil Action No. 3667

GEORGE RAMSEY, et al; ELMER STUDER, WALTER H. STUDER and DALE F. STUDER, d/b/a Walden Ridge Coal Company; LEON NUNLEY, d/b/a Leon Nunley Coal Company; PAUL GIBBS, d/b/a Paul Gibbs Coal Company; LOIS HALL TRAVIS, Admnx., Est. W. J. Travis, and J. H. GRAHAM, d/b/a Ninth West Coal Co.; A & R COAL COMPANY, INC.; W. T. MORRISON and J. H. GRAHAM, d/b/a M & G Coal Co.; J. H. GRAHAM COAL COMPANY, INC.; W. T. MORRISON and LOIS HALL TRAVIS, Admnx. Est. of W. J. Travis, d/b/a M & T Coal Company; STEPHENSON BROTHERS COAL COMPANY, INC.; EDWARD NUNLEY, d/b/a Edward Nunley Coal Co.; EAST VALLEY COAL COMPANY, INC.; ELLIS WARD and LON L. VARNELL, d/b/a Tracy City Coal Co.; HENRY WILLIS FLYNN, d/b/a Willis Flynn Coal Co.; H. W. FLYNN COAL CO., INC.; HOWARD HIGGINS, d/b/a Howard Higgins Coal Co.; HOWARD HIGGINS COAL COMPANY, INC.; JOHN T. STEPHENSON and HOWARD STEPHENSON, d/b/a Stephenson Brothers Coal Company; MARSHALL MEEKS, d/b/a Meeks Coal Company,

Plaintiffs,

v.

UNITED MINE WORKERS OF AMERICA,

Defendant.

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

2 Tuesday, September 21, 1965
Chattanooga, Tennessee

BE IT REMEMBERED, the above-entitled cause came on for hearing on this date before the Honorable Frank W. Wilson, Judge of said Court, without the intervention of the jury, when the following proceedings were had and evidence introduced, to-wit:

The Court: All right, Mr. Dale. Will you call the case that is for trial this morning?

Clerk Robert Dale: For non-jury civil trial, Case No. 3667, George Ramsey and others vs. United Mine Workers of America.

* * * * * * * * * *

7 PAUL GIBBS,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

8 By Mr. Walker:

Q. Would you please state your name, sir?

A. Paul Gibbs.

* * * * * * * * * *

9 Q. And when did you first move onto property owned by or leased to Tennessee Products and Chemical Corporation or Tennessee Consolidated Coal Company?

A. I went to Tennessee Products property July the 17th, 1953.

Q. And where did you go on that occasion, what area?

A. Floyd Hollow.

Q. What was your mining or what was your business operation made up of at that time?

A. I was mining and trucking combined.

Q. How many mines did you have at that time?

10 A. Just the one at that time.

Q. You had leased other land at that time, sir?

A. No, sir, not at that time.

Q. In 1954, how many mines did you have?

A. I started the second one there in Floyd Hollow in October of '54.

Q. In 1955, how many mines did you have?

A. Three.

Q. In 1956, how many mines did you have?

A. Four.

Q. Could you name the mines that you had starting in 1953?

A. 53, 58 and 59 and 75.

Q. Were you actively engaged in the mining of these mines yourself at this time?

A. 53, 58 and 59. I operated those mines.

Q. And on the other mines what were you doing?

A. It was subleased.

Q. Do you recall who you subleased to?

A. Yes, very well, that fellow was Earl Lockhart.

* * * * * * * * * *

20 Q. On this morning or this day of October the 27th, did you talk to any District 19 or International representative at the Reel's Cove office?

A. No, sir, they wouldn't talk to us up there.

Q. What happened?

A. They just got in their car and left.

Q. After they left, what did you do?

A. We followed them on down to Mr. George Gilbert's house.

Q. What occurred at Mr. Gilbert's house?

A. There was about eight or ten carloads of us went on down there to try to talk to them. We was wanting to try to go back to work, if possible, and when we got down there there was a photographer followed us down there, and Mr. Gilbert came out in the yard and was going to shoot him if he didn't leave.

Mr. Combs: I didn't hear the name, who he said was going to shoot who.

The Witness: Mr. George Gilbert was going to shoot the photographer if he didn't take his camera and leave, is what he told him.

Mr. Combs: Do you know who the photographer was?

The Witness: No, sir, I don't.

21 Mr. Rayson: Your Honor, we object to that as being irrelevant, immaterial to any issue in this case and move it be stricken.

The Court: Overrule the objection.

By Mr. Walker:

Q. Let me go back to your meeting at Reel's Cove office, Mr. Gibbs. Was any agreement worked out or any signing of any National Bituminous Wage Agreement worked out at the Reel's Cove office on this earlier meeting that morning?

A. No, sir, they wouldn't talk to us up there.

Q. Wouldn't talk to you?

A. No, sir.

Q. Do you recall who was with you when you went to Mr. Gilbert's house?

A. Well, Hayden Smith is one that I can recall, he rode down there in the car with me.

Q. Do you recall any other operator that was there?

A. Lonnie Presnell was there.

Q. Who else?

A. Some of the Johnson boys, I believe Alton was down there, too.

Q. Who all was present at Mr. Gilbert's house on October the 27th, 1955?

A. Outside of the —

22 Q. (Interposing) Outside.

A. Outside of the mine operators?

Q. Right. Was there any District 19 or International representatives there?

A. Mr. George was there at the house, himself, and Mr. Allen Condra was there with him, and Mr. Pass.

Q. Who is Mr. Pass?

A. Well, he was the secretary and treasurer of District 19 at that time.

Q. Did you have any discussions with any of these representatives of District 19 and the International on the front yard of Mr. Gilbert's home?

A. No, sir. I had been doing the talking for the group and they called me in his house.

Q. You went into the house?

A. Yes, sir.

Q. Who all was inside of the house when you entered?

A. Mr. Gilbert, Mr. Pass and Mr. Condra and Dave Sampson.

Q. Who is Dave Sampson?

A. Well, he was operating the coal mine up in there during those—during that period of time.

Q. After you entered the house, did you have any discussions with Mr. Pass or Mr. Gilbert or Mr. Condra?

A. Yes, sir.

23 Q. What was the subject of your discussion?

A. They said they was going to have to be assured of the 40-cent welfare payment before we could ever sign a contract, and we went ahead and talked and discussed there, and then they came out with an idea and asked me if we would agree, would sign an authorization to pay the full 40 cents on new business if they would let us go ahead and sign the contract and pay what we could on the present business we was on.

* * * * * * * * * *

Q. Did either Mr. Pass or Mr. Gilbert or Mr. Condra tell you why they would not require you to pay the 40 cents per ton welfare on old business?

A. Mr. Pass and Mr. Gilbert both made the statement that they knew we couldn't pay the full 40 cents on

24 the business that we was on, that the 40 cents wasn't

in it, and to go ahead and to operate like we had been operating and pay what we could until we got new business. If we would sign this authorization they would meet us up at Whitwell at the supply house the next day and we could sign the contract. That was late in the afternoon on October the 27th, and I went back out and told the rest of the fellows what they asked me to agree to and they all agreed to it, and we met up there on the 28th and signed the contract.

Q. Did you sign any agreements or instruments at the home of Mr. Gilbert on October the 27th?

A. No, sir, I did not.

Q. On October the 28th, 1955, did you meet at the supply house at Whitwell?

A. Yes, sir.

Q. Were any members of the International or — strike that — Any representatives of the International or District 19 there?

A. Yes, sir, I met them there, that was what they asked us to do down there that afternoon.

Q. Who was present on this meeting?

A. Mr. Pass, Mr. Gilbert and Mr. Condra.

Q. Did you have any further discussion with Mr. Pass and Mr. Gilbert on this meeting?

A. Well, nothing only just the routine of what we had talked about the day before. Mr. Pass got up on the porch there and made the statement that he said that this was a meat and bread proposition and the men needed to go back to work and we had all agreed to sign the authorization to pay the 40 cents on new business, and he would be happy to get everybody back to work.

Q. What did he make in regard to the statement as to wages to your employees?

A. He never mentioned this.

Mr. Rayson: Object to that as being a leading question, your Honor.

The Court: Well, the witness said he never mentioned

this so I guess we do not need to spend a great deal of time on that.

Q. After you signed the authorization, were you permitted to sign the National Bituminous Wage Agreement in 1955?

A. I was.

Q. Did you return to work at that time?

A. I believe that was on a Friday afternoon, we didn't go back to work until on Monday, the best I recall.

* * * * * * * * * *

27 Q. Now, after the signing of the 1955 National or the 1955 amendment to the 1950 National Bituminous Agreement, what were you paying your employees?

A. In '55?

* * * * * * * * * *

A. Well, to the best of my knowledge, I think that the day men got $1.20 per day increase and it worked out to where that we gave the pieceworkers a nickel more on the car.

Q. Was this under the wage scale that is required by the 1955 amendment?

A. Sure was.

* * * * * * * * * *

28 Q. Did you answer, Mr. Gibbs?

A. I said they got an increase of $1.20 more on the day and I was paying $12 before this increase came on.

Q. Was that the UMW scale?

A. No, sir, it was not.

Q. Was it above or below the scale?

A. Below.

* * * * * * * * * *

29 Q. Do you recall what you paid per ton to the Welfare Fund during this year?

A. I think it was 10 cents a ton.

* * * * * * * * * *

30 Q. Did you sign the 1956 amendment to the National Bituminous Wage Agreement?

A. Yes, sir.

* * * * * * * * * *

37 Q. Okay. Do you recall about what time of year that the old business or old contract which we have referred to began to play out?

A. I believe that was about June of '57.

Q. Okay. Prior to that time had you had to reschedule your work in the mines or in any method or way?

A. Well, what happened during that time we might have got a few more days work at the mines than the other
38 places for I had a better grade of coal, the Floyd Hollow coal was a better grade of coal than anywhere on the whitwell area, but some of them had to just completely stop work altogether, but I got more work.

* * * * * * * * * *

43 Q. Mr. Gibbs, were you a member of the Mt. Olive or Holly Branch Association?

A. Yes, sir.

Q. Or group of men? In this group did you participate or work with any other persons in submitting a bid, working up and submitting a bid to TVA for the sale of coal?

A. Well, the Mt. Olive and Holly Branch was in
44 two different groups and I was in the Mt. Olive group, which included about 10 or 12 mines, and they was so many on each side and we furnished the coal for that '58 and '59 contract to the TVA during that period of time.

Q. Do you recall in the discussions of the preparation of your bid the amount of welfare that you would consider in the bid?

A. Yes, sir.

Q. What was that amount?

A. We had to agree to pay the full 40 cents and the company agreed to pay the 30 cents and let us pay a dime, which stated in that letter there that I got a copy of, and during the time that when we bid for this contract we had

to cut our mine price in order to get some business from the TVA, which we had been paying to get back prior to that time in '57.

Q. Was Mt. Olive or Holly Branch successful on their bid where you previously stated you cut your mine price 10 cents per ton?

A. Yes, sir, we had a contract for 18 months, the best I can recall.

Q. Can you recall when that contract was awarded?

A. The opening bid, I believe, was on January the 30th, 1958.

* * * * * * * * * *

45 Q. Okay. Were you involved with any litigation with the United Mine Workers of America Welfare Fund?

A. Yes, sir.

Q. In the year of '58?

A. (Witness moves head up and down.)

Q. Do you recall what day you were served with papers of the welfare suit?

A. March the 11th, 1958.

* * * * * * * * * *

46 Q. Going back on the royalty payments to the Welfare Fund, on the business that was being done under the Tepco or Tennessee Products contract, was money being deducted from you each week or each pay period?

A. Supposed to have been deducted every week.

Q. And all payments made by you to the Welfare Fund during this period was made by Tennessee Products?

A. That is correct.

Q. On the Mt. Olive-Holly Branch contract, was the welfare deducted from your gross pay on those occasions or on those payments?

A. Yes, sir.

Q. How was that done, who was responsible for deducting that?

A. I believe Tri-State Coal Sales handled that.

Q. And how much per ton did they deduct?

A. Ten cents.

* * * * * * * * * *

Do you know of your own personal knowledge of anything other than the 10 cents per ton welfare being deducted or paid on this tonnage produced under the
47 Mt. Olive-Holly Branch contract?

A. Not to my knowledge, I don't know whether there was any more than that paid or not.

* * * * * * * * * *

49 Q. Did you sign the 1959 amendment to the National Bituminous Wage Agreement?

A. Yes, sir.

Q. Did you have any discussions with any District representative or International representative of the United Mine Workers?

A. Mr. George Gilbert.

Q. What were your conversations or discussions with Mr. Gilbert on this?

A. Well, the contract had been changed quite a bit and looked like that it was stronger toward the welfare payment and the miners wage and we was leery about signing it and we held off there for two or three days and wouldn't sign it, and Mr. George Gilbert, we talked to him on this occasion, and we told him we was afraid to sign it, afraid the men would come back and sue us for the difference between what we were paying them and the Bituminous Wage and the full 40 cents welfare, and he said, "I have always taken care of you boys, I have in the past and I will in the
50 future." And he said, "Go ahead and sign it and let's get these mines back to work." And that was the ground that we signed the last contract.

* * * * * * * * * *

53 Q. What kind of an operation was the Pikeville Fuel Company?

A. They were stripping and auger.

Q. And is that in a different type of operation from your mine?

A. Yes.

Q. What kind of mines did you have during the period of 1956 through 1960?

A. I had good mines.

Q. What type of mining operations were you doing?

A. Hand loading.

Q. Explain to the Court what a hand-loading mine is.

A. Well, you have to put the coal in the cars.

* * * * * * * * * *

A. We used mine rail and cars and these cars would go in the place and then they would have to load the car by hand with a shovel, that's what you call hand-loaded mines.

* * * * * * * * * *

55 Q. I will ask you if you were ever an employee of Grundy Mining Company?

A. Yes, sir.

Q. When was that employment entered into?

A. August the 12th, 1960.

Q. What was your position at that time?

A. Superintendent of the Grays Creek Mine.

Q. What type of mine was the Grays Creek to be?

A. Mechanical mine.

Q. Did this include mechanical loading also, sir?

A. Yes, sir.

Q. When were you to start work with Grundy Mining Company?

A. August the 15th, 1960.

Q. Did you report for work that morning?

A. Yes, sir.

Q. Did you work?

A. No, sir.

Q. Why?

A. I went down into the Grays Creek area about a quarter after six and I stayed around down there a while and waited

for the employees to show up and nobody never did come to work.

* * * * * * * * * *

84 Q. Going back to your mines in the Whitwell area, what was the average depth of the seam of coal in your various mines?

A. The average seam of that Sewanee seam over there is about 42 inches.

* * * * * * * * * *

93 CROSS EXAMINATION

By Mr. Rayson:

Q. Do you remember how many mines you had in operation in 1960, Mr. Gibbs?

A. Yes, sir, I had 59, 75, and worked a little mine we opened up for a few days, called it 74.

Q. Basically you had two mines in operation in that year, is that correct?

A. That's right.

Q. In 1956 how many mines did you have open?

A. Four.

Q. Did some of these mines just gradually work out?

A. Not then, no, sir.

Q. In the period between 1956 and 1960?

A. Yes, sir.

Q. These, mines, how long were they good for, two or three years?

A. Well, I opened up the 59 mine in February of '55 and it went up through the biggest part of '50, about five years.

Q. That was an exceptionally good mine?

A. Yes, it was.

Q. But on the average the hand-loading mines in Whitwell where you worked were good for about two or

94 three years, were they not?

A. No, most of them worked from five to ten years.

Q. Five to ten years?

A. Yes, sir.

Q. In any event, you were down to two mines in 1960?

A. Yes, sir.

Q. When did these mines cease operations, as far as you were concerned?

A. 59 mine worked up through the greater part of '60, I'd say all of '60 before they completely worked out.

Q. Were you given a notice of termination on certain of your mines in 1961 by Tennessee Products?

A. On 75 and this 74 that I mentioned.

Q. Were those the only two mines that you had left at that time?

A. Yes, sir.

Q. When did you receive that notice of termination?

A. I believe it was September of '61.

Q. Were they still in operation?

A. Yes, sir.

Q. When did you cease mining them then after receiving that notice?

A. Some three or four weeks later.

Q. Did you work them out some three or four weeks later then?

95 A. We worked that 74 out, it was just only in a little ways and we run into some old workings.

Q. Well, what about the other one, did you work it out?

A. I had to pull the equipment out of it.

Q. In other words, you didn't work the other one out?

A. No, sir, I did not.

Q. And you did this at the direction of Tennessee Products, is that correct?

A. From the letter that I got from Mr. Howard Human, yes.

Q. Mr. Human, I think, was the local mine manager of Tennessee Products at that time, wasn't he?

A. That is correct.

Q. He had the say-so over the operations of the small mines there, didn't he?

A. Yes, sir.

Q. Did you and Mr. Human have some disagreement about that time?

A. Yes, sir.

Q. Did it have anything to do with the fact that you were suing Tennessee Products for $275,000 and claiming damages?

A. No, sir, it wasn't mentioned.

Q. You were suing Tennessee Products at this time
96 for some $275,000, weren't you?

A. Yes, sir.

Q. Do you recall when you filed that suit?

A. No, sir, I don't.

Q. Was it some months before the termination of your leases there?

A. Oh, it could have been two or three months, something like that.

Q. Did this lawsuit relate to the fact that you had lost out on your hauling contract with Pikeville Coal Company?

A. It related to them canceling the Pikeville Coal Company lease.

Q. And you then lost your contract to haul coal?

A. On that particular property, yes, sir.

Q. Right. And you claim that Tennessee Products wrongfully terminated that lease and thereby wrongfully damaged you in the amount of $275,000, is that true or false?

A. That is true.

Q. And you had filed this suit some months prior to the time that Tennessee Products terminated your lease?

A. Yes, sir.

Q. Now, are you saying to us this morning that you tried to get more leases then and Mr. Human told you that, "No, I am not going to give you any more leases. You
97 hand-loading mines can't operate competitively."

Is that what you told Mr. Walker in response to one of his questions?

A. Mr. Human wasn't in the picture at this time, Mr. Rayson, it was Mr. Travis.

Q. Oh, you mean that at the time your leases weren't canceled nobody mentioned to you that the hand-loading mines weren't competitive?

A. Mr. Travis told me that, yes, sir.

Q. But that was at least a year and a half prior to the time that your leases were canceled, is that right?

A. Yes, sir.

Q. And so that didn't have anything to do with the time your leases were canceled, is that right?

A. No, sir.

Q. I believe you told the Court at the trial you had here in the case of Paul Gibbs against the United Mine Workers, tried in 1962 in this Court, that the United Mine Workers insisted that the company cancel those leases, is that right?

A. That's what I was informed by Mr. Travis.

Q. Is that what you were implying in that case, Mr. Gibbs?

A. Mr. Travis told me that himself, that they put the pressure on him and for him to not give me any
98 more leases.

Q. But, actually, when those leases were canceled, you were accusing Mr. Human of double dealing with you so that he could get a kickback from somebody else, weren't you?

A. I asked him if he wasn't doing that, yes, sir.

Q. You accused him of that, didn't you?

A. I might have.

Q. You might have. Is there any doubt in your mind about that, Mr. Gibbs, did you or didn't you?

A. I asked him this, I said, "If I would give you 10 or 15 cents a ton, you would be glad for me to keep that business over there, wouldn't you?"

He said, "I would like to have it."

I said, "I am not buying you."

Q. Let's see if we can't clarify that picture a little bit, Mr. Gibbs. At that time you were hauling coal over to the Marquette Cement plant, weren't you?

A. Yes, sir.

Q. And you suspected that somebody else wanted that business, didn't you?

A. I knew they did.

Q. And that business was shifted away from you by Mr. Human to Mr. Campbell?

A. That's right.

Q. Jim Campbell. He operated a small mine over
99 there?

A. Yes, sir.

Q. And about two weeks later it was shifted away to another man by the name of Lon Varnell, one of your co-plaintiffs in this case, is that right?

A. That's right.

Q. And that is what you thought was the double deal as far as these people and Howard Human were concerned, is that right?

A. Mr. Human never did deny it to me.

Q. He didn't?

A. No, sir.

Q. And all of this resulted at or about the time you were cancelled out of Tennessee Products and they refused to give you any more hand-loading leases, is that right?

A. They refused to give me any more, yes, sir, of any type.

Q. This is what was going on at the time, this was during the time you were making all of these accusations, is that right?

A. During the time of that trial that you are talking about?

Q. No, sir, I am talking about in September of 1961 when you were canceled out you were also making these accusations of Mr. Human.

100 A. I was trying to get some more business and some more mines and he absolutely refused them and Mr. Travis refused me before he went out over there, said the union was putting the pressure on them for them not

to deal with me on any more mines, Mr. Howard Human and Mr. Travis both told me that.

Q. Nevertheless, you were cancelled out about the time you were making these accusations to Mr. Human, is that right?

A. I was canceled, I will say that.

Q. I believe I recall your testimony in the last case when you were suggesting that the Mine Workers caused you to lose these contracts that you couldn't get anything out of Mr. Human, you couldn't get even any explanation out of him, is that what you told the Court in the last trial?

A. Yes, sir.

Q. You didn't tell the Court, though, that you were having these conversations with Mr. Human whereby you accused him of taking a kickback from somebody else so as to get you out of the job, did you?

A. You say I didn't tell him that?

Q. You didn't tell the Court that in the last trial, did you?

A. I probably wasn't asked.

Q. Yes, I am sure you weren't asked. Didn't you
101 represent to this Court in the last trial that in a typical week that your small mines in the Whitwell area that you were making over a dollar a ton mining coal?

A. Making over a dollar a ton mining coal?

Q. Yes, sir. Didn't you tell the Court that?

A. My records doesn't show that.

Q. I am asking you if you didn't tell the Court that, Mr. Gibbs?

A. I wouldn't say positive whether I did or didn't.

Q. You don't recall whether or not you introduced an exhibit showing that you made over a dollar a ton mining coal from these small mines in 1950?

A. I don't remember that, no, sir.

Q. 1960, 1960, if I said 1950. You don't recall that?

A. No, for I knew I wasn't mining in 1961.

Q. Well, I mean 1960. You don't recall that?

A. No, sir.

Q. Did you at all times pay your men, your hand-loading employees, handloaders, on a per car basis?

A. All except the shift men that I had driving the entry and the air course.

Q. My question is, the people who actually hand-loaded the coal?

A. Well, they was hand-loading, too.

102 Q. Oh, I see. Well —

A. (Interposing) You said all of the handloaders, these men hand loaded, too.

Q. I see. Go ahead and explain then what you did.

A. Well, these men that worked driving the entry and the air course, laying track and switches, I paid those fellows by the day, and the man in the room loading, hand-loading, I paid him by the car.

Q. But the people that did basically hand-loading, you are paying, you paid them by the ton?

A. Paid them by the car.

Q. Or by the car, rather. Did you have scales at your mine?

A. No, sir.

Q. Did you become involved in a wage and hour controversy in 1958?

A. I was checked some time during that Holly Branch and Mt. Olive contract.

Q. Do you recall whether or not anything was paid by Tennessee Products?

A. I don't know nothing about Tennessee Products. When they checked my records they was all right and I didn't pay anything.

Q. You didn't have to pay anything?

A. No, sir.

103 Q. Whether the company paid anything, you don't know?

A. Well, not on my records, no, sir.

Testimony of Paul Gibbs—Cross

Q. Where was this mine that you and Herman Sanders obtained from Tennessee Products in 1961?

A. You mean the property that was stripped? We didn't have any mines.

Q. Tennessee Consolidated, yes, sir.

A. It was in Marion County.

Q. Was this on the general area of the Tennessee Consolidated lands?

A. It was on a 1000-acre tract of land that Tennessee Consolidated owned.

Q. How far is it as a crow flies from Grays Creek?

A. Ten or twelve miles.

Q. Ten or twelve miles. You say you operated in that mine for something like a year?

A. Two years.

Q. And you operated there without a union?

A. That's right.

Q. Did you sublease the mine to a man named Church?

A. He did the stripping.

Q. Well, did you sublease it to him?

A. Just a verbal agreement.

Q. Verbal agreement. But he then did the work, he
104 employed the men and that sort of thing, is that right?

A. He employed the men that he worked at the strip operation.

Q. And you hauled the coal?

A. That's right.

Q. So you were in and out of that mine a good bit?

A. I was there every day.

Q. Yes. And it was at that mine that you obtained a contract with the TVA for some seven or 800 tons a week for a year?

A. Yes, sir.

Q. You shipped on that out of that mine for a year?

A. That's right.

Q. Had you previously told this Court in the other case

that that was a rather scrappy piece of land that you obtained?

A. That's right.

Q. Poor coal?

A. Yes, sir.

Q. Wasn't it as good as coal in other areas of the Sequatchie Valley?

A. No, sir.

Q. It was not?

A. No, sir.

Q. Poor quality coal?

105 A. It had been worked for the last 75 years, I guess.

Q. High ash coal?

A. Yes, sir.

Q. Does this explain why you were receiving penalties on that contract?

A. That's right.

Q. And this was your responsibility to pay the penalties under the contract?

A. Yes, sir.

Q. You are saying that the coal was not up to the quality that you had represented it to be to the TVA and, therefore, you incurred penalties, is that right?

A. That's right.

Q. What wage did you use to compute your tonnage under that contract?

A. I didn't use any wage for he did the stripping and he furnished the employees at the stripping himself.

Q. You don't know what he paid them?

A. No, sir, I didn't look at his records, I just know what he told me.

Q. Mr. Gibbs, you testified concerning the 30-day shutdown in January of 1957. Did this involved some question concerning whether or not you were required to make a payment of Christmas pay to your employees?

A. That was what it was over, yes, sir.

106 Q. And the result of that disagreement was your mine was closed for some 30 days?

A. That's right.

Q. And then you finally said, as you had before, that you would pay five employees?

A. I agreed to pay them there on that date, 30 days later I did pay them and we went back to work.

Q. Did you pay them?

A. Yes, sir.

Q. You did pay them all at that time or some time later?

A. I paid those five.

Q. But that's what that disagreement was about, was whether you would live up to the contract concerning the Christmas pay?

A. The contract called for a full year, full calendar year on your payroll, and I only had five men at that time that was eligible.

* * * * * * * * * *

108 Q. You were employed as a supervisor at Grundy Mining Company, I believe you testified, on August 12, 1960?

A. Yes, sir.

Q. Would you tell us who employed you?

A. Mr. Harwood, Judson Harwood.

Q. Judson Harwood, who is he?

A. Well, he introduced himself to me at this time on the phone as the president of Grundy Mining Company.

Q. Did you know him at all?

A. I had never met him, no, sir.

Q. Did you ever meet him thereafter?

A. Yes, sir.

Q. Did you know him to be a Nashville lawyer rep-
109 resenting Tennessee Consolidated in labor matters?

A. Not at the time he hired me, no, sir.

Q. You didn't know him at this time. You later learned that?

A. Yes, sir.

Q. He told you he was president of the company?

A. President of the Grundy Mining Company.

Q. And he wanted to employ you as supervisor at so much a month?

A. Yes, sir.

Q. Did you agree to take that job?

A. Yes, sir.

Q. You also get an agreement with him in that one phone conversation to truck the coal from the Grundy Mines?

A. That same day he hired me I asked him about what he would pay me per month and he told me $600 and I said, "That won't interest me."

I said, "I have trucks and I am working out of a job with them and I need some place to go with those trucks."

And he said, "Well, I will give you the hauling, too."

Q. So he said that you could take the hauling at so much per ton?

A. That's right.

110 Q. Now, Mr. Gibbs, you told the Court on your direct examination that you were going to put in mechanized mines?

A. That's right.

Q. Actually you didn't know what kind of mines you were going to put in, did you?

A. He told me what he wanted me to put in.

Q. You didn't have any idea, you testified at least two or three times before this, Mr. Gibbs, have you not, that you didn't have any idea of what kind of equipment was going in those mines?

A. I don't know what kind of equipment he was putting in, there's plenty of different kinds of mechanical machinery. He was going to start them off with hand loading just until we got them under the ground.

Q. Did he tell you how many employees you were to have?

A. How many what?

Q. Employees you were to have?

A. Said he wanted 40 to start with.

Q. Do you have any idea how many employees it would take to run these mines that you were talking about?

A. Yes, sir, I operated mines before, I knew about what it would take.

Q. How many was it going to take?

111 A. I was going to use eight men at each mine.

Q. Eight men a day or eight men a shift?

A. Eight men a shift.

Q. How many mines were you going to put in?

A. Five.

Q. This was in 1960?

A. Yes, sir.

Q. So you would have 16 men in each mine, is that what you were talking about?

A. If I had run a double shift, yes, sir.

Q. Did he tell you that these men were not going to be United Mine Workers?

A. No, sir, he didn't tell me that. He told me to hire them, didn't make any difference whose union they belonged to, UMW, Southern Labor or no union at all.

Q. Now, Mr. Gibbs, didn't he tell you and didn't you testify—

A. (interposing) I told you just what he told me.

Q. Didn't you testify previously that this mine, that he told you this mine was going to work under the Southern Labor Union, didn't he tell you that?

A. He told me just what I have told you. He could have said, "It is going under Southern Labor Union," but he told me to hire those men, work them whether they belonged to the Southern Labor Union, UMW or no union at all.

112 Q. Did he tell you where he was going to get them?

A. No, sir.

Q. Or where you were to get them?

A. No, sir.

Q. Did he leave that entirely up to you?

A. He told me to work the men, that Johnny Cain would have them over there.

Q. Did he tell you who Johnny Cain was?

A. No, sir.

Q. Did you know Johnny Cain at that time?

A. No, I had never met him.

Q. You mean he just told you that Johnny Cain would bring you some men?

A. He said—

Q. (Interposing) You were to hire them, is that right?

A. Yes, sir.

Q. And you didn't have any idea whatsoever who these men were going to be?

A. I wasn't interested, no, sir.

Q. You didn't ask him anything about Johnny Cain, you didn't even say, "Who is that?", is that right?

A. No, sir.

Q. Did he tell you where to go?

A. Yes, sir.

113 Q. To open these mines?

A. Yes, sir.

Q. And this was what, three days before the 15th of August?

A. It was on the 12th, on Friday, the 15th was on Monday.

Q. Did he tell you where you were to get the hand tools that you were to use or other tools that you were to use in opening these mines?

A. No, sir, he didn't.

Q. Did you make any arrangements to do that before you went out there on the 15th of August?

A. No, sir.

* * * * * * * * * * *

117 Q. Just before lunch, Mr. Gibbs, you were telling us that Mr. Harwood called you and told you that a man named Johnny Cain had some employees at Gray's Creek for you to employ but that you didn't know who Johnny Cain was and you didn't ask him, is that correct?

A. That is correct.

118 Q. You did later learn who Johnny Cain was, is that correct?

A. Yes, sir.

Q. And who was he?

A. He was a representative for the Southern Labor Union.

Q. And I think you also later learned that he had been called into this matter by the Grundy Mining Company?

A. Mr. Harwood told me that later, yes, sir.

Q. Yes. These men that were over there that morning you identified some of them, Waldon Shrum, I believe, was one of them?

A. He was the president of Local 5881.

Q. Of course, you have known him for a long time?

A. Yes, sir.

Q. Married your sister, I believe?

A. Yes, sir.

Q. You also said you thought you saw George Gilbert?

A. Yes, sir, I made that statement.

Q. Did you say, "I am thinking I saw him," or how did you put that, Mr. Gibbs?

A. I am pretty sure that it was him.

Q. You are not positive that it was George Gilbert?

A. No, I wouldn't say positive.

119 Q. And, as a matter of fact, when I asked you this question on a deposition two or three years ago, when I asked you to name everyone you could think of you didn't mention George Gilbert, did you?

A. You didn't ask me about—

Q. (Interposing) I asked you if you could name those people you saw and you named several but you did not name George Gilbert?

A. I did in another trial, yes, sir.

Q. I am talking about a deposition that was taken prior to your trial in this courtroom.

A. I don't know whether I made mention of him or not.

Q. You don't remember that. All right. In any event, you are not positive about that?

A. Not in that deposition, no, sir.

Q. And you are not positive that you saw George Gilbert?

A. No, I am not going to swear that I seen George Gilbert but I am almost positive.

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120 Q. Now, these mines that you say you were going to open up in Gray's Creek, were these like the mines that you had over at Whitwell?

A. No, sir.

121 Q. They were going to be a little different?

A. Going to be mechanical mines.

Q. They were going to be small mines but mechanical, is that it?

A. No, sir, it wasn't going to be any small mines.

Q. You were going to have five large mines over there?

A. Yes, sir.

Q. What did you have when you got over there, what did you have in the way of physical properties concerning these mines?

A. I didn't have anything.

Q. Weren't the mine openings or the places at which the mines were to be opened, weren't they bulldozed free of trees and debris and that sort of thing?

A. Yes, sir.

Q. And there were five such areas bulldozed?

A. Yes, sir.

Q. How far apart were these areas?

A. Oh, I'd say from one to 2,000 feet apart.

Q. Were they all on the same side of the mountain or were they on different sides?

A. I didn't go to all of them, I don't know.

Q. You don't know. Do you know that there were

122 five areas bulldozed off?

A. All I know is what they told me.

Q. Oh, you mean you didn't see them?

A. No, sir.

Q. Didn't see any of them?

A. Yes, sir.

Q. How many did you see?

A. One.

Q. I believe you indicated in your prior case that within the space of two weeks you would have those mines in operation?

A. We could start loading coal the first day, yes, sir.

Q. And that you were going to mine 2,000 tons a week from each one of those mines?

A. Yes, sir.

Q. And that it would take you a week or two weeks to mine 2,000 from each of those mines, that was your statement?

A. From one to two weeks to mine that much.

Q. From each mine, 2,000 tons a week from each one of those mines?

A. Yes, sir.

Q. And you estimated that it would take you about two weeks to get into that degree of production, didn't

123 you?

A. Yes, sir.

Q. And you estimated that you could mine 2,000 tons of coal from each of those mines with 16 men?

A. I didn't say that.

Q. I believe what you said was eight men a shift on two shifts.

A. I said I could start off that with that and the mine was being drove in that I would increase the number of men.

Q. Did you tell us that you intended to use 16 men, Mr. Gibbs, per mine, in fact, didn't you tell us that this morning?

A. I told you that to start with, I didn't tell you how many men I was going to use after I got them in operation.

Q. In any event, you could this in the space of a week or two?

A. Yes, sir, for the mine was already dozed off.

Q. Two thousand tons a week, though?

A. Yes, sir.

Q. Were you a member of the United Mine Workers?

A. 1932.

Q. Were you a member during the '50s?

A. No, sir—yes, I was, too, at one time, yes, sir.

Q. Can you tell us when you were a member?

A. In '55.

124 Q. Didn't stay very long as a member, did you?

A. No, sir.

Q. How long do you think you remained a member?

A. Five or six months.

Q. And did you leave because you were told you weren't eligible for a hospital card?

A. I left because I never did get one.

Q. And you complained about that?

A. I asked Mr. Gilbert why I didn't get it, he was the one that asked me to join for the hospitalization benefits.

Q. Well, in any event, you didn't get a hospital card and so you quit?

A. That's right.

Q. In 1955?

A. Yes, sir.

Q. You wanted the same sort of hospital card that your employees had, is that right?

A. I thought you just had one contract and that's what it called for.

Q. Your own employees had a hospital, didn't they?

A. Yes, sir.

Q. Hospital card that was paying for a good bit of their medical expense of their families?

A. Yes.

Q. You knew that, didn't you?

125 A. Yes, sir.

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Testimony of Leon Nunley—Direct

127 LEON NUNLEY,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Would you state your name, please?

A. Leon Nunley.

Q. Where do you live, Mr. Nunley?

A. I live at Jasper.

Q. What is your occupation?

A. Coal miner.

128 Q. How long have you been in the coal mining business?

A. Ever since about '53.

Q. And where did you start work in 1953 and in what capacity?

A. Reel's Cove.

Q. And what were you doing?

A. Operating a coal mine.

Q. What mine did you have at that time, sir?

A. RC-24.

Q. I will ask you if you signed the National Bituminous Wage Agreement of 1952 when you started working Mine RC-24?

A. Yes, sir.

Q. Who did you sign the agreement with or who brought it to you?

A. George Gilbert.

Q. Where was the agreement signed?

A. At the mine.

Q. Did you have any discussion with Mr. Gilbert in regard to the signed or not signing of that agreement?

A. He said I would have to sign a contract if I worked.

Q. Did you discuss any of the provisions of the contract?

A. Well, I told him I didn't think I could be able

129 to pay the welfare and he said pay what I could, go ahead and work, if I worked I would have to sign the contract.

* * * * * * * * * *

Q. What kind of mine did you have at this time?

A. It was a hand-loading mine.

Q. Please tell us what you mean by "hand-loading mine."

A. Well, took cars in the rooms and loaded them by hand.

Q. What kind of machinery did you have in the mine?

A. We didn't have any machinery.

Q. How did you transport the coal from the front
130 of the mine out to the mouth?

A. With a mule.

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Q. Did you sign the National Bituminous Wage Agreement Amendment of 1955?

A. Yes, sir.

Q. Did you have any discussions with anyone regarding the signing of that amendment?

A. Well, only I just told them I couldn't pay the welfare.

Mr. Rayson: We object to that, your Honor. He told "them." I think he ought to be specific if he is going to testify.

Q. Would you tell us who you had your conversations with?

A. George Gilbert.

Q. And when were these conversations held and where?

A. At the mines.

Q. Do you recall when?

A. No, sir.

131 Q. What month or what year?

A. No, sir, I don't remember exactly what time it was.

Q. What kind of discussion did you have with Mr. Gilbert?

A. Well, just told him that I couldn't pay the welfare

and he said do as I done in the past, just pay what I could and work.

* * * * * * * * * *

136 Q. (Interposing) Hold it, just strike that. Did you sign the National Bituminous Wage Agreement of 1958 or the amendment of 1958?

A. Yes.

Q. Do you recall what representative of District 19 of the International Union that you discussed it with at that time?

A. George Gilbert.

Q. What kind of discussion did you have with Mr. Gilbert at that time?

A. Well, it was just like the usual, I told him I wouldn't be able to pay it, he always said, "Go ahead and pay what you can pay."

* * * * * * * * * *

138 Q. What kind of mine did you have at Griffith's Creek?

A. We had a mechanized mine.

Q. Why did you leave from the hand-loading mine and go to the mechanized mine?

A. Well, Mr. Travis, he figured that we could pay the contract, better be able to pay the welfare if we get in a mechanized mine.

* * * * * * * * * *

142 Q. Were you given any financial assistance or aid in obtaining this equipment or loan?

A. Yes, sir.

Q. In what way were you assisted?

A. Well, I got a loan from the Third National Bank in Nashville.

Q. Did anyone hold a deed of trust or a chattel mortgage on that equipment?

A. Tennessee Products.

Q. For what purpose was Tennessee Products holding the chattel mortgage or deed of trust?

A. Well, they stood good for the money I borrowed.

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145 Q. When did you actually start working in No.
146 GC-4 mine?

A. It was in the fall of '59.

Q. Do you recall approximately, I mean what month?

A. I believe, I believe it was in September.

Q. Did you work the year of 1960?

A. Yes, sir.

Q. Do you recall what wages you were paying during the year of 1960 to your employees?

A. No, sir, I don't recall exactly. We started out under contract price and we gave them raises as we could. I believe about the first part of '61, why, we went paying union scale, the last part of '61.

Mr. Rayson: He say the latter part of 1961?

The Witness: I believe it might have been the first of '61.

Q. Was that the first part of '61 or the latter part of '61 that you were paying the union scale?

A. I don't know for sure.

Q. Were you paying any welfare during this period?

A. Paid some, yes, sir.

Q. How much?

A. I don't know.

Q. You have no idea of approximately how much you paid each year?

A. No, sir, I don't.

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166 Mr. Combs: If the Court please, we move to strike that, certainly there is no evidence here that the defendants had anything to do with that.

The Court: Well, I will sustain that.

Mr. Rowntree: If your Honor please, may we have it admitted subject to the proof which is to come later as to the situation that actually existed in 1963 and the proof

with respect to this condition he has described being the natural consequence?

The Court: Well, at the present time there is nothing in the record to indicate this was in any way related to the defendants. You can ask him why he quit guarding
167 the equipment. I will admit it for the limited purpose of showing why he quit guarding the equipment but not for any purpose that might reflect upon the substantive charge against the defendant in this case.

Mr. Rowntree: Except as it may be connected up later?

The Court: Well, if you can later make it relevant and move to request its admission at that time, but I realize that you can't put all of your proof in at one time and sometimes what you put in may or may not develop and it presents a rather difficult problem as to how to treat that.

Mr. Rowntree: Yes, sir.

The Court: I believe the safest course is to sustain the objection and then leave the burden upon you gentlemen when you connect it to move to have it brought in.

Mr. Combs: We agree with that.

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174 CROSS EXAMINATION

By Mr. Rayson:

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186 Q. Did you ever pay the United Mine Workers Welfare Fund any substantial part of the 40-cent royalty prior to October of 1955?

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187 A. No, sir.

Q. Didn't the company tell you even before that, Mr. Nunley, that you were supposed to pay that 40-cent royalty?

A. Well, the company understood that we had an agreement with the union to work as we could.

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Q. Well, I will proceed then to my next question. First,

I would like to have this introduced as an exhibit, your Honor.

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191 Q. Did you have an occasion to fail to pay your vacation pay in 1960, Mr. Nunley, did you fail to do that in 1960?

A. Yes.

Q. And one of the reasons or the reason your men refused to work then was because you had not paid the vacation?

A. But I paid them their vacation pay.

Q. After how long?

192 A. We was in bad conditions like I were talking about the agreement, we had the men agreed that they would forget the pay, vacation pay, if I could pay them $20.12, so I did, but when the time come they changed their minds and said no, they wanted their vacation pay.

Q. Did you just work that agreement out with your men, is that the idea?

A. Well, they said it would be all right with the Whitwell local to do this.

Q. You didn't take it up with the Whitwell local, you just dealt directly with the men on that?

A. With the men on that because George Gilbert told me always—I had a committee at the mines, to work my grievance out with the men at the mine.

Q. Your grievance out?

A. With the men at the mines.

Q. Now, in any event, you did not pay your vacation pay in 1960, is that right?

A. Well, I don't remember that.

Q. Well, was it one of those years, 1960 or 1961?

A. One or the other of the years.

Q. Somebody finally pay that for you?

A. Beg your pardon?

Q. Did somebody finally pay that for you or did you pay it yourself?

193 A. I paid it myself.

* * * * * * * * *

Q. Were you responsible for the penalties on your coal?

A. The company would check it out if I had a penalty.

Q. The company check out their royalty from your income on the coal?

A. Yes.

Q. They didn't pay the money over to you and let you pay the royalty back to them, is that right?

A. No, they checked it out.

Q. They check out this 25 cents you were supposed
194 to pay on the equipment?

A. Yes, sir.

Q. Airdox Company wouldn't sell that equipment to you unless the company agreed to check out the 25 cents, is that right?

A. That's right, yes, sir.

Q. Did the company negotiate that agreement with Airdox or did you?

A. Well, my brother done that, made that deal with them on the Long-Airdox.

Q. Tennessee Products and your brother together?

A. Done that, made the deal, yes, sir.

* * * * * * * * * *

195 Q. Did the company tell you when you got this loan from the Company for $35,000, that was in 1959, wasn't it?

A. Do how now?

Q. Did the company loan you $35,000 in 1939, Mr.
196 Nunley, '59, I beg your pardon?

A. They stood good for it.

Q. Did they tell you what kind of equipment that they wanted you to buy?

A. Yes, sir.

Q. Did they tell you where to get it, where it was available?

A. Well, yes, we found it.

* * * * * * * * * *

Q. Did they loan you a little more money than you needed then to buy the equipment?

A. Well, no, but we bought machines and they would take them and cut it out on a tonnage basis.

Q. Were they seeing—

A. (Interposing) They didn't actually make no more bank loans, no.

Q. Was the company seeing to it that the bank loan was being repaid, too?

197 A. Yes, sir, they cut that out.

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202 Q. Do you remember anything particular about your business in 1956, Mr. Nunley?

A. Well, what do you mean by that?

Q. Well, how many mines were you operating?

A. I was operating two.

Q. Were the mines producing pretty good that year?

A. Worked good that year, yes, sir.

Q. You mean your mining conditions were particularly good?

A. Just as usual.

Q. Just as usual. Do you remember anything about the subsequent years, were the mining conditions about

203 the same?

A. About the same, yes.

Q. Did you have the same number of mines in subsequent years?

A. Do you mean in '55? What year do you mean?

Q. Fifty-seven, '58.

A. I believe now that one of the mines, both of them worked out in the last part of '58 or '59.

Q. Worked out. Were they going downhill from '56 on?

Mr. Rowntree: We ask counsel to clarify that question.

Q. Were the mines going downhill, that is, were they working out towards the end of it from '56 on?

A. Yes, they was being worked out.

Q. The further you get back in those mines the more difficult it is to mine, isn't it?

A. Well, no, sir, the only thing would be the haulage, chances are they are about the same.

Q. Otherwise they are about the same except for the haulage, is that what you are saying?

A. Yes.

Q. What is the problem of the haulage?

A. You get a little further in is all.

Q. Little more costly to get the coal out on the haulage?

A. Takes a little more time to come out.

204 Q. Yes. Do you remember having to pay a minimum wage back in 1957?

A. Minimum?

Q. Did you have to increase your wages and pay a minimum wage around this time?

A. Yes, sir, I believe the minimum wage, if I am not for sure, come in at $2.015, come in in '57 or '58, I don't know which it was.

Q. Did you have to increase your wages to meet that?

A. Yes, sir.

Q. Do you have any idea of how much you had to increase your wages?

A. No, sir, not right off, I don't.

Q. You do remember it, though?

A. Yes, sir.

Q. You don't remember what you were paying your shift men then?

A. In '58?

Q. Whenever you had to start paying the minimum wage?

A. It had to be $2.015 an hour, all shift men had to make that.

Q. All right. What were you paying your shift men then a day when that minimum wage came into effect, Mr.

205 Nunley?

A. I believe $14, raised them up to that, I am not for sure.

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207 EDWARD NUNLEY,

a plaintiff, called as a witness at the instance of the
208 plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Rowntree:

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226 Q. Mr. Nunley, how were you able to obtain a contract with TVA in 1957 when other truck mines or other operators were not able to obtain such a contract?

A. Well, probably a little cheaper and lucky, I will put both in.

Q. Did you bid lower than anybody else?

A. I bid a little lower than the rest of them, I think.

Q. How much Welfare Fund did you take into consideration when you got that contract or made your bid?

A. Well, I didn't figure any welfare in it much. I
227 couldn't figure it in and get the contract, I thought I would try to get by without it.

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233 Mr. Rowntree: Yes, sir. I say that's a natural consequence and necessary almost in that country, consequence of the refusal of the union to negotiate a contract which would permit these men to go back to work. They would not work unless the contract was signed. The International Union in its negotiations, so-called negotiations, would accept no other contract except the national contract. We say that that was pursuant to a conspiracy, an agreement actually expressed on the face of the contract that they would not take any different contract and that because of that the men would not work, the mine was forced to be closed down and these operators cannot be compelled to maintain the rest of their life watching the mine to keep the equipment from being destroyed. The

deterioration of equipment is a natural consequence of the shutdown of the mine, it follows the same as night follows day.

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247 Mr. Combs: Now, we object to that testimony, your Honor, it is hearsay completely and showing no liability or responsibility on the part of these defendants.

I would like to call attention to the fact that this case is controlled, we think, by Section 6 of the Norris-LaGuardia Act which provides, in effect, that in order to hold the union responsible or its officers for unlawful acts that it is necessary to show by clear proof authorization, participation on that occasion of any of the unlawful acts alleged and we submit that certainly the naked testimony of a witness that dynamiting and thievery and other acts of violence without any reference to who did it, when it was done, who was responsible for it, is clearly inadmissible in a case of this type and we submit that the fact that it is an anti-trust case, or the fact that counsel contends that it is necessary to prove his case, to prove this makes no difference as to the law on the admission of evidence and we rather earnestly submit this argument to the Court.

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249 Mr. Combs: May it please the Court, your Honor has ruled on the motion, I think quite properly, subject to connection. We are not objecting to the order of proof that comes in here at all. We are objecting to this witness testifying to something that is not admissible evidence. He can't connect it in any way. He has no knowledge of it at all.

Now, in connecting proof, connecting it with the mine workers certainly would have to be based upon clear proof regardless of the cases that counsel cites there. That is what the law is, it has to be clear proof.

My objection doesn't run to the question of later connecting the acts he is talking about, this witness is testifying about something that he doesn't know anything about.

There isn't any question of connecting the order of proof, but the motion, your Honor has ruled on the motion, so I won't pursue it any further at this time.

Mr. Rowntree: I believe, your Honor, that the clarity of proof rule of the Norris-LaGuardia Act declares as to the clarity of the proof on the whole record.

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251 Q. Will you state whether or not some of your electrical equipment was destroyed?

A. Well, that's true, they stole all of my trolley wire and my generator and I couldn't go back and pump no water.

Mr. Combs: May it please the Court, I don't want to be jumping up, but may I have a continuing objection
252 as to this type of testimony?

The Court: Yes. Overruled subject to the same ruling the Court made earlier, subject to being connected up and subject to a motion to strike at a later time.

Mr. Combs: Yes, your Honor.

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256 CROSS EXAMINATION

By Mr. Rayson:

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260 Q. Did I understand you to say that you discussed this contract with George Gilbert?

A. Yes, sir.

Q. Did George Gilbert tell you that you shouldn't pay the minimum wage back then?

A. Wasn't nothing said about the wages.

Q. He didn't tell you that you shouldn't pay the minimum wage, that it wouldn't be necessary for you to do so?

A. All George ever told me about my wages, he said, "Tojo, your agreement with you and your men alone is you satisfy your men, that's all that matters."

Q. But you did not pay your employees the minimum wage in this instance, did you?

A. Well, the Government said I didn't.

Q. As a matter of fact, you admitted that you didn't in that case, didn't you?

A. That's right.

Q. As a matter of fact, you admitted that you had deliberately falsified your records to show that you had paid your employees the minimum wage, didn't you?

A. That's right.

Q. And that you had falsified your records to show
261 where the coal came from that you were supplying the TVA?

A. Right.

* * * * * * * * * *

264 Q. Mr. Nunley, in addition to the penalty which you paid, the monetary penalty which you paid with respect to this proceeding, I believe you also had another wage and hour penalty, did you not?

A. Yeah, I had a wage penalty, yeah.

Q. You have in your 1958 corporation return, Plaintiffs' Exhibit 47, a showing of a wage and hour penalty of $4,843.32?

A. Right.

Q. Can you explain what that was for?

A. Well, that was for, they said they didn't apply to the Walsh-Healy $2.015 and hour.

Q. Then in your 19 —

265 A. (Interposing) I worked seven hours a shift and they said I worked eight.

Q. Then in your 1959 return you show a wage and hour penalty in the amount of $4,744.00, which, as I understand it, is the penalty you paid in connection with the proceedings shown in Exhibit 54, is that correct?

A. Right.

* * * * * * * * * *

Q. By the way, were you a member of the United Mine Workers at one time?

266 A. Yes, sir, I sure was for many years.

Q. In fact, you were a member of the United Mine Workers as late as 1955, weren't you, when you were a coal operator?

A. Yeah.

Q. Did you have a hospital card yourself?

A. Yes, sir.

Q. Did your employees have a hospital card?

A. Some of them did.

Q. Some of your employees received rather substantial medical payments from the Welfare Fund, didn't they?

A. I think they did, I wouldn't know about that.

Q. You don't know about that?

A. No.

Q. As a matter of fact, you did, didn't you, Mr. Nunley?

A. Yes, sir.

Q. Is that correct?

A. Yes, sir.

Q. Several hundred dollars?

A. Yes, sir.

Q. In fact, you received a lot more personally in benefits from the Welfare Fund than you ever paid into it, didn't you?

A. Well, they never did count it up, I don't know.

267 Q. You don't recall?

A. (Witness moves head from side to side.)

Q. Do you remember being sued by the Welfare Fund for some deficiency?

A. Yes, sir.

Q. Do you remember having your deposition taken in Jasper in connection with that case?

A. Yes, sir.

Q. Do you remember testifying at that time that you had paid the Welfare Fund in full on your production?

A. I had at that time.

Q. Up until about 1956 or something like that?

A. Well, what time I run the mines, that was back years ago, I paid some welfare back when I run the mines.

* * * * * * * * * *

268 Q. When did you get this RC-31 mine?

A. And fact of the business, I just don't know, sometime in '55, I think.

Q. Did you get it from Mr. Travis?

A. Yes, sir.

Q. Mr. Travis was the manager of the small mines?

A. Yes, sir.

Q. For Tennessee Products at that time?

A. Yes, sir, that's right.

Q. How long did you operate that mine?

A. Well, I just, like I say, I don't remember, somewheres seven or eight months, maybe longer, I don't know.

Q. You operated it yourself?

A. No, it was sub-leased out.

Q. Sub-leased out to whom?

A. Walter Parsons.

Q. Did you have anything to do with the operation of the mine, did you help him any?

A. Just haul the coal is all.

Q. Didn't have anything to do with managing the mine?

A. Never did.

269 Q. Never went about the place?

A. Very seldom.

Q. Did you help Mr. Parsons equip the mine?

A. Yes, I helped, I bought the equipment.

Q. You did buy the equipment. Did you ever go in the mine?

A. Once or twice.

Q. Now, you disposed of that mine after awhile, didn't you?

A. Yeah, Mr. Parsons got hurt.

Q. That's when you disposed of it?

A. Yes, sir.

Q. Did you put that mine with your brother?

A. I just turned it over to him and he probably run it in my name awhile before Tennessee Products changed the

lease, that's the reason I couldn't tell you, probably run it and just left it in my name to try to get the lease changed over to him.

Q. You are not saying that was part of the East Valley Company, are you?

A. No, sir, it's not on East Valley.

Q. As a matter of fact, you sold that mine to your brother, didn't you?

A. No.

270 Q. Didn't you and Mr. Parsons sell your mine and your equipment to your brother?

A. Mr. Parsons and I sold—might have sold his labor bill to him but I give him my part.

Q. I wonder if you recall testifying that you sold your interest to him along with Mr. Parsons for $300?

A. Well, I might have, I don't remember whether I did or not, it has been a long time.

Q. See if you recall this testimony. I am reading from page 12 of the deposition taken in the case of Lewis against Edward Nunley in 486 on the Winchester docket.

"Well, I had bought some trucks and went up there and talked to Woody Travis about the mine."

This is your testimony that I am reading, Mr. Nunley.

"He said, 'Well, he would let me have the mines.' So I got the mine. The company opened up, you know, bulldozed them out and I built the hoppers and Walt Parsons contracted the mines and run the mines until sometime in 1957 when the cars on the tipple caught him and broke his leg. I hauled his coal. He mined it, I hauled it. Had two trucks hauling his coal part of the time and so when he broke his leg he couldn't go back to the mine any more so he sold the mines to me—me and him together sold it to Leon Nunley for $300, and so I never did run it no more, never did fool with it no more."

271 Do you remember saying that in your deposition?

A. Well, like I said, I let Leon have my part first

and then Parsons let him have his later, I don't remember the date.

Q. In other words, it wasn't correct when you said that you and Parsons together sold your interest for $300?

A. Well, Parsons was still partly running under Leon, you know, I mean he was still staying there and running the mines under Leon.

Q. Well, Parsons broke his leg and that's why he couldn't run the mine?

A. Well, he kept the mines for awhile and just come back and forwards, I don't remember just exactly how it was, anyhow, after so long a time he gave up on it.

Q. And that $300 was for the equipment and the mine, wasn't it?

A. I don't remember, probably was.

Q. Now, after you were blacklisted you were completely out of the coal business for three years, is that right?

A. Right.

Q. The next thing you did was to come back or get into the GC-4 mine when your brother became injured and you more or less performed his work in that mine, is that right?

A. Right.

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273 Q. Actually the coal on the Tennessee property there is not a very high quality coal, is it?

A. It's a pretty good coal.

Mr. Rowntree: On what property?

Mr. Rayson: The Prentice Cooper Preserve or whatever that land is called there.

Q. You say it is pretty good coal?

A. It is not the worst and not the best, we will put it that way.

Q. How does it compare with the coal in the Pocket?

A. The Pocket is the best coal.

Q. What?

A. The Pocket is the best.

274 Q. The Pocket is the best coal?

A. (Witness moves head up and down.)

Q. Do you know what the BTU content of any of this coal is?

A. No, I don't.

Q. But do you know that the Pocket coal is better coal?

A. Some places, yes, not every place, every mine ain't the same that you open up.

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283 JOHN STEPHENSON,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kelly:

* * * * * * * * * *

288 Q. Did anything unusual occur during this period of time with reference to your mine or the other mines that were closed down in the area?

A. In 1950?

Q. Yes, sir.

A. Yes, sir, when we got the grievance settled we had to sign a contract.

Q. What grievance are you talking about?

A. Well, the difference in wages and the welfare payment.

Q. What was provided in the way of Welfare Fund contributions there?

A. The ones that were delinquent they checked with their tonnage in '50 and they had to make a cash payment at the Pocket local in the Whitwell Pocket.

Q. Who made that audit and investigation and who laid down that requirement?

A. Mr. Hugh Rankin and Matt Bunch and Bryan
289 Parmalee.

Q. Who was Hugh Rankin?

A. He was the district representative.

Q. Of District 19, UMW of A?

A. Yes.

Q. Who was Matt Bunch?

A. He was district representative, too.

Q. They had two district representatives?

A. Yes, sir.

Q. Who was Bryan Parmalee?

A. He was president of the Pocket local, I believe, Allan.

Q. Were you found to be delinquent in your contributions?

A. No, sir, I wasn't.

* * * * * * * * * * *

292 A. Well, in 1952, contract time, we were, I believe they raised the welfare from 30 to 40 cents and just didn't seem that we could pay 40 cents.

Q. Were you and other operators undertaking to negotiate for a lower Welfare Fund rate?

A. We were trying to.

Q. That's what I say.

A. Yes, sir.

Q. What about the wage scale?

A. Well, we were, we always settled the wage scale

293 at the mines with the men.

Q. On a mine-to-mine basis?

A. Yes, sir.

Q. Regardless of what the contract provided?

A. Yes, sir, they would always tell us after '52.

* * * * * * * * * * *

298 Q. Did you pay the full Welfare Fund contribution under the 1952 contract?

A. No, sir.

Q. And why didn't you pay it?

A. I couldn't have paid it and made a profit.

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305 Q. Before we get there, were any union meetings called and held in the union hall at Whitwell when this subject was discussed?

A. Yes, there were several during that time.

Q. Did you attend those meetings?

A. Yes, sir.

Q. What was said and by whom were any statements that you say made?

A. Albert Pass, this was at the high school at Whitwell, we had a meeting.

Mr. Combs: I didn't understand what local union.

The Witness: 5227.

Mr. Combs: And where?

The Witness: At Whitwell High School.

Mr. Combs: At Whitwell High School?

The Witness: Yes, sir. Albert Pass was making a speech and he said he intended to have the full 40 cents or
306 the grass would grow over the mines before they operated any more. That's what he told the people there at that meeting.

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311 Q. During this period time also were negotiations continuing to be held as to how to resolve this question about the welfare contribution?

A. Yes, sir.

* * * * * * * * * *

Q. Did you personally participate in any such conferences?

A. Yes, sir, I did.

Q. In what capacity?

312 A. Paul Gibbs and I were elected to go and talk to the company and the union.

Q. What company are you referring to?

A. Tennessee Products and Chemical.

Q. Who would be the person that you would talk to with that company?

A. Travis, Mr. Woody Travis.

Q. All right. And who else?

A. Well, Albert Pass and George Gilbert was in the office at the time and they were trying to work out an

authorization for the company to withhold 40 cents per ton on all new business that we got prior to 1955.

Q. Now, who originated that idea?

A. Albert Pass.

Q. How many meetings or conferences did you have on this subject?

A. That was the only one, that was all he would agree to.

Q. And just state the details of his proposal a little more fully, John.

A. Well, he said at this meeting that the only way that he would permit another contract to be signed was that the company deduct the 40 cents per ton from our money before they paid us.

Q. And what type of business was that deduction to
313 come from?

A. All new business.

Q. Now, what amount of current business, or what about current business or coal being sold under existing sales contracts?

A. He said to go ahead and pay what we could and work out our wages at the mines with our men.

Q. At this particular meeting was there an agreement between the parties upon this at this first meeting?

A. Yes, sir. Mr. Travis didn't want to agree to that, that's the reason it took us about two months to get it settled.

Q. Then who did he require the authorization to run to to make a deduction, who is going to deduct the welfare?

A. Tennessee Products and Chemical.

Q. That was why Mr. Travis was objecting?

A. Yes, sir.

Q. Did you have any other meetings about this?

A. That's the only one I can remember, Allen.

Q. Did you attend a meeting at George Gilbert's home in Jasper about this?

A. No, sir, I didn't.

Q. Finally was this method or pattern of signing authorizations for deductions put into effect?

A. Yes, sir, it was.

314 Q. About when was that concluded?

A. The latter part of '55, I don't remember the exact date.

Q. Did you at that time sign the 1955 UMW contract?

A. Yes, sir, I did.

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Q. Did you then sign a new contract in 1956?

A. Yes, sir.

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316 Q. Then after the contract was executed did you then have any work stoppages under the '59 contract?

A. Oh, yes, sir.

Q. What happened then beginning with the first event and give the time and place?

A. We didn't have too much trouble until Reel's Cove started working out.

Q. Who operated Reel's Cove?

A. Tennessee Products and Chemical.

Q. What type of mining operation was that?

A. It was a mechanized mine.

Q. How many men were employed?

A. Around 300.

Q. And what do you mean by the phrase "started working out"?

A. Well, they allotted so much coal to this mine and they had just about worked it out.

Q. You are talking about the mine was about mined out, no more coal physically capable of being mined?

A. Yes, sir.

Q. What was happening to the personnel employed in that mine?

A. They were idle, they were idle.

317 Q. Were they members of the United Mine Workers?

A. Yes, sir, they were.

Q. Was a position taken by that group of union members with reference to employment practices of operators in the territory, including you?

A. Yes, sir. They contended that all new mines that they were—

Q. (Interposing) Now, who are you referring to?

A. Reel's Cove panel, all the GC mines, they contended that they should be hired first on those new jobs because they were on the Reel's Cove panel. This was all the GC mines, the new four GC mines that were newly opened.

Q. Did that contention result in a work stoppage?

A. Numerous work stoppages.

Q. Were picket lines present?

A. Yes, they were.

Q. On what basis and about what times did you see picket lines?

A. Well, to start with they put the picket line on the 108 Highway.

Q. What position on the highway?

A. Usually at Star Gap, what we call Star Gap at the top of the mountain.

Q. At that particular point what particular effect did it have on the total area?

318 A. It shut the whole area down.

Q. All right, sir.

A. We ran an injunction against them for that and that moved the picket line over on the GC area and didn't bother us too much more after that.

Q. Now, "we", who do you refer to running an injunction?

A. The small operators on the Whitwell side.

Q. Were you included in that group of small operators?

A. Yes, sir, I was.

Q. Did that then remove the picketing insofar as your section of the field was concerned?

A. Yes, sir, it moved that bunch, I mean those grievances that they had over to the GC area.

Q. Now, in the GC area, what does "GC" refer to?

A. You mean the GC, means Griffith's Creek section.

Q. Griffith's Creek. How many mines were operating in the Griffith's Creek section?

A. Four small mechanized mines.

Q. Who were they?

A. Virgil Thomas, Marshall Meeks, Mack Condra and Tojo Nunley or Leon Nunley.

Q. Do you know where the picket line, when it had to clear 108, why it moved to GC road instead of the other roads that served your area?

319 A. Yes, sir, because they were mechanical mines and these Reel's Cove men were wanting jobs there.

Q. And what type of mining were you carrying out?

A. Hand loading mine.

Q. Did the GC, did the Reel's Cove men on the unemployed panel have interest only in employment in a mechanized mine?

A. It seemed that way, yes, sir.

Q. Now, then do you know how long that section was blocked off by the picket line?

A. Well, they would get one grievance worked out and then they would find something else. For a run of a year and a half or two years there they just worked a week or two and then off a week or two, was the way it seemed.

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321 Q. What were the causes of the grievances that precipitated these stoppages in that phase of 1962?

A. The UMWA had cancelled practically all of the contracts in that area.

Q. Did they cancel your contract?

A. Yes, sir, they did.

Q. When did they do that?

A. I believe it was in October of '62.

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322 By Mr. Kelly:

Q. John, was the notice of cancellation of your contract in writing?

A. Yes, sir, it was.

Q. Who signed that notice?

A. I don't remember, Allan, it was from the district office.

Q. Are you referring to District 19 office?

A. Yes, District 19. I thought you meant 5227.

323 Q. Prior to that time had you been sued by the trustees of the UMW Welfare Fund for delinquent payments to the Welfare Fund?

A. Yes, sir, I had.

Q. Do you remember when you were sued or for what period of time they sued you for delinquency?

A. They brought suit in 1958, it was from '52 to '58, I believe.

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329 Q. After 1957 did you change your marketing practices in any way?

A. Yes, sir, we bid on a TVA contract.

Q. Now "we", who are "we"?

A. All of the group of operators at Whitwell.

Q. Did you form some association or syndicate of operators?

A. Yes, sir.

Q. What was that called?

A. Mount Olive-Holly Branch.

Q. Was that one or two associations?

A. That was two.

Q. Well, let's take Mount Olive. What group generally composed that syndicate?

A. The name didn't mean the vicinity of the mines, if that's what you are trying to say.

Q. Well, Mount Olive is a territory?

A. Yes, sir.

Q. And Holly Branch is another territory?

330 A. Yes.

Q. But that wasn't related to territory, you say?

A. No, they divided the mines up evenly.

Q. Which association did you belong to?

A. Mount Olive.

Q. And how many operators were there in that group?

A. Nine, I believe, Alan.

Q. And how many were in the Holly Branch group?

A. There was nine or ten in that.

Q. And what was the purpose of getting together in that type of an association?

A. To bid on a TVA contract.

Q. And how did you carry out the mechanics of placing the bid for the Mount Olive group, the one that you belonged to?

A. We hired Tri-State Coal Sales to bid our coal.

Q. And who is Tri-State Coal Sales?

A. They are a coal bidding firm here in Chattanooga.

Q. Name some men that you know that are associated in that.

A. I don't know as I can.

Q. All right. Through this sales agent did Mount Olive group obtain a marketing sales contract to TVA?

A. Yes, sir, 18 months.

Q. And where was that coal to be delivered?

331 A. To the barge at the lake.

Q. Barge at what lake?

A. Bennett Lake near Jasper.

Q. Is that a location on the Tennessee River?

A. Yes, sir.

Q. And do you know where the coal from there was taken and delivered, at what place of operation of TVA?

A. They was a clause in the contract that said that they could divert the coal from Widow's Creek to Kingston, which I think some of it was.

Q. Was it primarily for delivery to Widow's Creek?

A. Yes, sir.

Q. With the right to divert if they wanted to to Kingston?

A. Yes, sir.

Q. Do you know of your own knowledge whether or not the Holly Branch association procured a similar contract?

A. Yes, sir, they did.

Q. What was your experience of operations under that contract?

A. We didn't, that was in '58 and the '59 period, we didn't have too much trouble in that period.

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333 Q. In composing and making up the bid of the Mount Olive group to TVA how much welfare contributions was included on a per ton basis?

A. Thirty cents.

Q. Thirty cents?

A. Yes, sir.

Q. What wage scale was included?

A. That was always worked out at the mines, Allan,

334 each mine.

Q. I'm talking about now in the bid that Tri-State made up for you all.

A. $2.015 an hour.

Q. How did that compare with what is called for in the uniform contract?

A. That was way in under the uniform contract.

Q. Sir?

A. That wasn't as high as the uniform contract.

Q. Why was only 30 cents welfare contribution included?

A. That's all we could pay, we thought, and get the bid successfully.

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Q. You said that the Mount Olive contract was an 18 months' contract?

A. Yes, sir.

Q. Did you ever get a renewal or a new contract with the TVA to replace that?

A. No, sir, we did not.

Q. Now, what experience did you have in your operations there with reference to fulfilling your TVA
335 contract?

A. We didn't have too much difficulty in that period.

Q. Did you attempt any other marketing processes during this period of time?

A. Yes, sir, after we filled the TVA contract Paul Gibbs and myself, we bid on a long term contract.

Q. Is that the same Paul Gibbs that testified first in this case?

A. Yes, sir. Of the two operators that was on Products' property we were the two that hadn't got in trouble with the minimum wage.

Q. I beg your pardon, I didn't understand that.

A. We hadn't got in trouble with the minimum wage, so Mr. Travis told us we could bid on another TVA contract if we would like, so we added the full 40 cents and bid on another TVA contract, we were unsuccessful.

Q. Did you make a joint bid or did you bid individually?

A. No, we made a joint bid.

Q. And you included in that proposal or your bid 40 cents a ton welfare?

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369 CROSS EXAMINATION

By Mr. Owens:

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376 Q. You furnished the equipment, paid them $1.90 and then you got $3.32 for it?

A. Yes, but I had a haul bill, insurance, out of that.

Q. Do you know what it came to that you made a ton on that?

A. What?

Q. Do you know what you made a ton on that?

A. Yes, sir, I made 32 cents.

Q. Do you know how much they made out of that $1.90?

A. Coal cost them approximately $1.50 to get loaded, they made 40 cents a ton besides what they loaded themselves.

Q. And then how much did Tennessee Products royalty come to, did you pay Tennessee Products for it?

A. Royalty? I sold the coal to Tennessee Products, that was my price was after delivery, $3.32.

Q. You don't know how much they were getting for it?

A. Not at that particular time I don't, no, sir.

Q. Did you negotiate with them over that?

A. You mean over the price?

Q. Yes.

A. Well, when we are on TVA contracts we knew what we were getting and they took their 60 cents a ton royalty plus the handling charges and we got the rest.

377 Q. They got 60 cents a ton royalty?

A. Yes, sir.

Q. Plus handling charges. How much was that?

A. I think a dime a ton at the time we were on spot, I mean on TVA contracts.

Q. Was any money paid for insurance?

A. Yes, sir.

Q. And how about the United States Steel Corporation, how much did they get?

A. You mean royalty?

Q. Yes, or whatever they got out of it.

A. Well, Tennessee Products sublet from TCI, I think they had a minimum royalty of $5,000 a month.

Q. How much did they get per ton, though?

A. I never did know that.

Q. Did you ever negotiate with them to get it reduced?

A. No, sir, I never did.

Q. Did you make kind of a reasonable contract with them?

A. No, sir.

Q. Did you with Tennessee Products?

A. No, sir, we just—we knew what we were going to get when we opened the mines.

Q. But did you try to re-negotiate that?

A. We did from time to time.

378 Q. You got them to give you increased money?

A. Yes, sir.

Q. When was that?

A. Well, usually when we would have a dispute in union wages and have a strike we would have to have more money to pay our men and they would raise the price of the coal.

Q. When did this occur?

A. Oh, '56, '55, '52, all through the years.

Q. Whenever there was an increase in wages then you are testifying that Tennessee Products then paid for that increase?

A. Well, a lot of times they didn't, if we had business and they could afford to they did, if we could get an increase in our price when we bid our coal, that's the way we did it, if we didn't, why, we didn't.

Q. How about, as a matter of fact, about the only time they increased was in 1955, that was 20 cents a ton, wasn't it?

A. We were getting more money in '52 than we were in '55.

Q. That's right. They had reduced down come '55, hadn't they?

A. They had reduced it in '53, we had to reduce it

379 in '53 to get the TVA contract.

Q. Then in 1955 is when they increased it 20 cents to take of the increase in wages at that time, is that correct?

A. Yes, sir.

Q. Did you pass that on to your employees?

A. Absolutely.

Q. And they also increased it to pay for the Welfare Fund, didn't they?

A. Not to us they didn't.

Q. How did that work?

A. Well, in '55 is when we signed the authorization for the company to hold the welfare on all new business, the price didn't change to us on the welfare.

Q. Well, did the company agree that they would assume 30 cents of that 40 cents?

A. Well, I never paid any more welfare after I signed the authorization, it was my understanding the company would pay it all on all new business.

Q. You never paid any welfare from 1955 on, is that right?

A. No, sir.

Q. And you don't know what welfare was paid on your tonnage then?

A. No, sir, I don't.

380 Q. From up until 1955 you had paid on all tonnage?

A. Yes, sir.

Q. That you had produced?

A. That's right.

Q. And then it was 1952 to 1955 you didn't pay all of the tonnage you produced, did you?

A. No, sir, the agreement we had we didn't have to.

Q. How did you remit to the Welfare Fund on that?

A. Just like they told us to, what we could afford to pay we put the tonnage and made it balance out to whatever the figure and the dollar was.

Q. That's what you put on the check letter of advice to the Welfare Fund that, "We are only paying on what we were told to pay and it's not all of the tonnage."?

A. That wasn't what George Gilbert told us to do.

Q. Now, I asked you what you told the Welfare Fund when you remitted.

A. We didn't tell them anything, we put down the tonnage for the amount that we could afford to pay for and the dollar and cents after it, that was all that was said.

Q. Also put 40 cents, though, didn't you?

A. Yes, sir.

Q. You put so many tons times 40 cents?

A. That's right.

Q. And the total?

381 A. That's right.

Q. And also that statement on what is called the check letter of advice said that is the total tons that you produced, didn't it?

A. Absolutely.

Q. And that wasn't true, was it?

A. No, sir, that's what we were told to do.

Q. But you didn't put down there that George Gilbert told you to do that, did you?

A. No, sir, I didn't.

Q. And you were told to do that in 1952?

A. No, sir, he wasn't there in '52, George Gilbert was there in '55.

Q. Why didn't you put that down then, why didn't you put the correct tonnage down?

A. When we had these meetings and they knew we couldn't pay it, they told us we couldn't pay it, and they told us just exactly how to do it, it shouldn't be a mystery to you, your home field workers knew about it, I mean that's the way it was, you pay what you can and put the price at 40 cents and go ahead and get your men back to work.

Q. Well, did you make any money in '53?

A. Yes, sir.

Q. Did you pay all of it out to the Welfare Fund?

A. No, sir.

382 Q. You didn't pay what you could then?

A. Well, I wasn't going to be broke and pay it to the Welfare Fund. Is that what you mean?

Q. You were going to decide how much you would make?

A. Yes, sir.

Q. That's what you meant by paying what you can?

A. Yes, sir.

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385 Q. All right. You made an agreement, or it was in 1955 there was an authorization for Products to

withhold 40 cents or withhold 30 cents, whatever it was, on all new business, is that correct?

A. Yes, sir.

Q. And do you know the number of the contract you were working under then?

A. I did at the time, I don't know now.

Q. When did that contract run out?

A. Sometime in '57.

Q. So that they did not withhold on any coal until sometime in 1957?

A. I think that's right.

Q. And you didn't pay on anything during that period of time?

A. No, sir, I didn't.

Q. And also the Walsh-Healy rates didn't apply to that contract, did it, until 1957?

A. I wouldn't be for sure but I don't think it did.

Q. And you were notified, weren't you, when that contract ran out that you would have to pay then the

386 Walsh-Healy rates from then on?

A. $2.015 an hour.

Q. And also that Products would have to withhold 40 cents or the 30 cents for the Welfare Fund, is that right?

A. They didn't notify me to that effect, no, sir.

Q. Never talked to Mr. Travis about that?

A. Well, that was understood between us when we signed this contract.

Q. Didn't Mr. Travis, in fact, call a meeting and tell all of you that you had to pay on the new contract the Walsh-Healy rates and that they would have to withhold the 40 cents a ton under their authorization and agreement they made with the Mine Workers?

A. When we bid on the coal that was discussed but it wasn't discussed afterwards.

Q. Didn't they suggest then that you form this partnership so that they could—as a method of getting out from under this?

A. Getting out from under what?

Q. Paying the Welfare Fund and so that they wouldn't be responsible for any Walsh-Healy rate?

A. No, sir, that was not discussed.

Q. Then what was the purpose of the Mount Olive Coal Company?

A. Well, we came over and talked to TVA and they
387 said that they couldn't buy coal from one single operator, that we weren't big enough and to get the right amount of tonnage we had to form—to promise enough coal to make the TVA interested in a long term contract, that's the reason that was formed.

Q. How did you get the contracts before that?

A. We didn't bid on any contracts before then, Tennessee Products did.

Q. Well, then why didn't Tennessee Products bid on it just like they had before?

A. I don't know that.

Q. Actually you were talking to TVA and they said they wouldn't accept any bids from you individually and that you would have to have someone else bid the coal?

A. They said we didn't have enough tonnage to promise.

Q. But that was the same thing that Tennessee Products had, they bid the coal on your mines previous to this, isn't that right?

A. No, sir. You didn't, when you sold coal to Tennessee Products, it didn't mean it was going to TVA. They had several, numerous contracts. Four years I run to Signal Mountain Cement Plant, I wasn't even under TVA.

Q. Yes. But I'm talking about the coal that did go to TVA. Tennessee Products bid on that coal, for that coal
388 for all of the mines on their property prior to 1957, is that correct?

A. That's right, all that I worked on they did.

Q. And then they designated that the coal was coming from the various truck mines or wherever the coal was coming from, isn't that correct?

A. I don't know anything about it before we bid on the contract ourselves, all I know is that it was delivered, the coal was, at a set price to Tennessee Products ramp.

Q. Didn't Mr. Travis suggest to you that you form this partnership?

A. Yes, sir, he did, but nothing was named about the welfare.

Q. Beg your pardon?

A. But nothing was named about the welfare.

Q. Did you make arrangements to make sure that the Welfare Fund got the 40 cents a ton out of that?

A. Well, I think that they cut 30 or 40 cents a ton out of that before we got our money, I am not for sure.

Q. You think that after the Mount Olive contract or the Mount Olive partnership went into being and you got a contract, you think that Tennessee Products paid that?

A. Well, that's what the authorization was for, I don't know whether they did or not.

Q. Yeah. But they didn't get the money, did they?

389 A. They got their royalty.

Q. Oh, they got theirs. We'll get into that later. I am talking about they didn't get the price from TVA, the money from TVA for the sale of the coal?

A. No.

Q. So they couldn't withhold it, could they?

A. They got their money from Tri-State, just like we did.

Q. That's right. But I am talking about so they couldn't withhold the 40 cents a ton for the Welfare Fund?

A. Well, you are trying to—what you are trying to do is put words in my mouth. I don't know what they did. I know we bid on the contract and we was to get a certain price from Tri-State and nothing was discussed about the welfare, to my knowledge.

Q. You don't know that it was taken out?

A. No, sir, I don't.

Q. You know what the price was that TVA was going to pay?

A. I did when we first bid it but I couldn't tell you now.

Q. And you knew it at the time what the price was?

A. Yes, sir, I knew what the price was.

Q. And you knew what Tri-State Coal Company was going to get?

390 A. Yes, sir.

Q. By the way, didn't you make an agreement with Tri-State Coal Company as to what they were to get?

A. Yes, sir, they got a dime for handling it.

Q. How about for anything else, did they get anything else?

A. Well, we got our check from Tri-State with the royalty deducted and handling charges deducted and that was it.

Q. You made an assignment, didn't you, to Tri-State that they withhold all of the money that was due and owing to Tennessee Products, isn't that right?

A. Well, I am sure they did.

Q. Beg your pardon?

A. I am sure they did, I mean Tennessee Products.

Q. They didn't make any assignment or you didn't make any provisions in that to pay the Welfare Fund, did you?

A. I don't know whether we did or not, it's a matter of record, you can see.

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391 Q. But you don't know whether they, the Welfare Fund, got any money?

A. No, sir, I don't.

Q. Well, doesn't your checks from the Tri-State Coal Sales Company show all of the deductions that were made?

A. Yes, it does.

Q. Does it show that there was any deduction made for the Welfare Fund?

A. I have not looked at one in years.

Q. (Mr. Owens handed a document to the witness.)

A. No, sir, there's nothing here on it.

Q. After seeing that check does that refresh your memory that they did not make any such deductions?

A. No, sir, they couldn't have if that is all the price of the coal was, I mean if that was the total price, plus the deductions on the check.

Q. So you knew that they weren't making these payments then?

A. Well, I am sure that I did at the time.

Q. Well, then if they weren't going to make these payments to the Welfare Fund under this contract why did you figure in 30 cents a ton when you made the bid?

A. I didn't figure the contract.

Q. Who did?

392 A. Tennessee Products did.

Q. Tennessee Products made that bid?

A. Yes.

Q. And they figured it?

A. No, they made it for us but they did the figuring, we didn't do any of the figuring on it.

Q. Well, did you participate in the figuring with them?

A. We agreed on the price that we would accept for the coal.

Q. Yes. But when they made the bid what was the name of the man that you sat down with and figured out what the bid would be?

A. I am going to tell you in detail just exactly what happened on the thing. Woody Travis called all of us operators in and he said he could bid the coal at a certain price and that we would bid it through Tri-State Coal Sales and after royalty and insurance and handling charges by Tri-State we would have a certain figure left and we agreed to that price and that's what we accepted.

Q. That's the only thing you know about it?

A. Absolutely.

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393 Q. Didn't Tennessee Products furnish some more men for these mines?

A. No, sir, they hired one man as a mine inspector, that was all.

394 Q. Didn't they also have some foremen and they made provisions also to check off some money to pay for these foremen a certain amount of tonnage by Tri-State?

A. That was later on in the contract.

Q. When was that?

A. After the contract had been in effect about six or eight months some of them mines were getting delinquent in their supervision of their mines and I think they probably cut a nickel off of a ton to pay the mine foreman to keep these fellows in line.

Q. Keep them in line?

A. They weren't keeping their mine up like the Bureau of Mines recommended, you know, and you are only allowed so many violations under a Government contract, and they were going to get us all into trouble, so they hired these men to keep these fellows in line to keep the mines up.

Q. Who were the men they hired to keep you in line?

A. Ben Cunningham is the only man I knew of.

Q. They also spoke to your operators about getting them in trouble on the Walsh-Healy rates, isn't that right?

A. Yes, sir, they did.

Q. And they told you that Merritt-Chapman and Scott that owned Tennessee Products was going to be blacklisted from large contracts that they had with the Government, isn't that right?

395 A. Well, they said in effect that they could be, they didn't say they were.

Q. They were afraid of it, weren't they?

A. Yes, sir, they were.

Q. Merritt-Chapman and Scott, who really owned all of these, had contracts with the Navy to build ships and many, many millions of dollars, isn't that right?

A. I never heard that discussed.

Q. They said, just said they were afraid they would get blacklisted along with you?

A. Yes, sir.

Q. As a matter of fact, hadn't they already been accused or hadn't it already, the Labor Department taken the position that they were in effect Tennessee Products' mines?

A. I don't know that.

Q. Now, you say you and Mr. Gibbs are the only ones that came out clean on this, is that right?

A. That was my understanding on it.

Q. All of the rest of them had been in violation of the Walsh-Healy Act?

A. That was my understanding of it.

Q. As a matter of fact, the Mount Olive Coal Company and the Holly Branch Coal Company, they were named, weren't they, as being in violation of it, the partnership?

396 A. How that actually worked was when they checked one man we were all in partners in that thing and when one man was guilty we were all guilty, but actually some of them weren't guilty, I mean I had paid, I had paid $18 a shift when the minimum wage was only sixteen.

Q. But you and Gibbs, you understand, were the only two ones that were clean?

A. Well, that's what I was told.

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404 Q. All right. Now, during the period of time you operated the V-8 and V-9 mine did you make any changes in the method of mining?

A. No, sir, practically the same.

Q. Beg your pardon?

A. Practically the same operation.

Q. Did you ever try to mechanize those mines?

A. No, sir, I was too deep to mechanize.

Q. You were too deep to mechanize?

A. Yes, sir.

Q. What do you mean by that?

A. Well, your entries were too narrow to get mechanized equipment in, cost too much money.

Q. Wasn't practical to mine those mechanized?

A. Sir?

Q. Wasn't a practical way to mine them by mechanization?

A. No, sir, I couldn't afford a million dollars worth of equipment.

Q. Weren't you asked in a discovery deposition whether it was a question of money or not is the reason that you didn't mechanize?

A. I guess I was, I don't know. How long ago
405 has that been?

Q. You don't know whether you were asked that question or not?

A. No, sir, I don't.

Q. I will ask you if you weren't asked these questions: "Was it a question of not having the money to do it in your case?"

You answered, "Well, no, I wouldn't say that it was."

A. Well, probably not at that time, I don't know. I don't remember what you're asking, how long ago has that been?

Q. Well, let's see, the 26th day of April, 1965, that's this year, isn't it. You can't remember making that statement?

A. Yes, sir, I think I remember you asked me that question.

Q. Did I ask you that question?

A. No, sir, Ed.

Q. Now, did you belong to the United Mine Workers?

A. Yes, sir, I did.

Q. When, what years?

A. Well, I started in '48, I believe, and then we belonged for three or four years and then they said operators
406 can't belong and they would kick us out and then they came back and asked us to join again. I belonged up to '58 off and on.

Q. And you had a hospital card?

A. Yes, sir, I did.

Q. That's a Welfare Fund hospital card?

A. (Witness moves head up and down.)

Q. And then they canceled that in 1958?

A. Somewhere along there, yes, sir.

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408 RECROSS EXAMINATION

By Mr. Owens:

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409 Q. You have testified to a lot of violence in that area over there. You neglected to testify about a man named Layne being shot.

A. Leonard Layne?

Q. Yes.

A. They didn't ask me about him.

Q. They ask you what other violence had occurred. They didn't ask you about Leonard Layne, but you never mentioned Leonard Layne?

A. No, sir, he was a union man.

Q. You didn't mention when that union man was shot, did you?

A. No, sir.

Q. That was shot by one of your fellow operators, wasn't he, was murdered?

410 Yes, sir. So was Aaron Presnell.

Q. Who was he murdered by?

A. By one of your union members.

Q. How do you know that?

A. Because I know who was there.

Q. Was there any union men convicted for killing your—was it your father-in-law?

A. No, there has been three killed in Grundy County, none of them has been convicted.

Q. Mr. Layne or Mr. John Higgins wasn't convicted for shooting Layne?

A. That was in Marion County.

Q. Oh. Did you know about— By the way, do you know Waldon Shrum?

A. Yes, sir.

Q. Did you mention anything about him being shot?

A. No, sir, I didn't mention about him killing our powder man either.

Q. Killed him in self-defense, didn't he?

A. I don't know about that, I wasn't there.

Q. As a matter of fact, he killed him, he said, because an official, a man had been sent there by an official of Tennessee Consolidated to kill him, didn't he?

A. I didn't hear that either.

Q. Did you hear he was shot in his front yard?

411 A. Yes, sir, I did.

Q. As he was putting up clothes, wasn't he?

A. I don't remember just how it was, but he shot, the way the paper read, that Ketner shot at Shrum and then Shrum returned the shot and killed him.

Q. That's right. You say that was one of your powder men?

A. That delivered powder to the mines, yes, sir.

Q. Did you mention anything about Howard Madewell's house being dynamited?

A. There's a lot of dynamiting.

Q. I didn't ask you that question. I asked you—

A. (Interposing) No, sir.

Q. I asked you if you mentioned anything about Howard Madewell.

A. No, sir, I didn't.

Q. Is that funny?

A. No, sir.

Q. Then why are you laughing about it?

A. Well, the way you expressed it, in other words, is the only reason I am laughing.

Q. Why didn't you mention that?

A. Well, they are too numerous to mention. You have read the papers.

Q. There's a lot of those houses over there of the
412 union people that were dynamited?

A. I never did know but one, that was Howard Madewell.

Q. You never did hear of any dynamite being thrown in their yard?

A. No, sir.

Q. And shot in their houses?

A. Yeah, I have heard Shrum shooting.

Q. You didn't mention that, did you?

A. No, sir, I didn't.

Q. Did you mention anything about Howard Higgins being arrested over here in the National Labor Relations Board hearing by Federal marshals for carrying a concealed weapon?

A. No, sir, if you had been shot at as much as he had I am afraid you would carry one, too.

Q. I wonder who was carrying the gun. Maybe they were carrying one because they knew that Howard Higgins always carried a gun.

A. I wouldn't think that was right.

Q. You wouldn't think that was right?

A. No, sir.

Q. You knew he always carried a gun, didn't you?

A. Howard Higgins?

Q. Yes.

413 A. No, sir, he didn't up until this trouble started.

Q. You knew about John Higgins, though, didn't you?

A. Yes, sir.

Q. You knew he had killed about five men, wasn't it?

A. No, sir, just three, I think.

Q. Three men. And after he was convicted of killing this Leonard Layne, union member, he was rewarded by the Tennessee Consolidated or Grundy Mining Company by being given a job, wasn't he?

A. No, sir, he had a job before he killed Leonard Layne.

Q. Wasn't he given one of these mines then after he did that and after he was convicted?

A. He had the mine before.

Q. You are sure of that?

A. Yes, sir, I am sure of that.

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414 J. H. GRAHAM,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Please state your name, sir.

415 A. J. H. Graham.

Q. Where do you live, Mr. Graham?

A. Sequatchie, Tennessee.

Q. What is your occupation?

A. At that time, well, I leased mines from Tennessee Products. At the present time I'm not employed.

Q. When did you first enter into the mining business?

A. I'd say around '53 or four, somewhere along in there. I don't know the exact date.

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Q. And in what form of business were you at that time?

A. At that time I was weighing coal for Tennessee Products at Whitwell.

Q. Then afterwards did you start operating any mines?

A. You mean after I started operating the mines? Well, wait, let me explain this to you, the way that is, I

416 had the mines leased and then I sub-leased it to an operator, you see, and give him so much a ton to put it in the hopper to operate the first mines I operated with Tennessee Products.

Q. Do you recall what mine that was?

A. Yes, sir, it was 79.

Q. And in whose name was the lease on that mine?

A. At that time it was in J. H. Graham.

Q. How long did you operate 79?

A. It was still in operation when we was closed down in '62, December the 26th.

Q. Have you ever been in any partnerships with any other persons in the mining business?

A. Yes, sir.

Q. With whom have you been in partnership?

A. Mr. Travis, W. J. Travis, he was manager of mines and property of Tennessee Products and Chemical Company.

Q. In what year did you enter into that partnership?

A. I believe, I am not for sure on the date of it, that, I believe it was '55, somewhere along there, I am not giving you the exact date because I can't remember.

Q. Have you been in partnerships with any other persons?

A. Yes, sir.

Q. Who else have you been in partnerships with?

A. I have been in partnerships with W. T. Morri-
417 son, he's one of the operators that operated on this property of Tennessee Products, and I was in business with John Stephenson.

Q. What was the name of the partnership between you and Mr. Travis?

A. Ninth West Coal Company to start with and in the latter part of the years it was Ninth West Coal, Incorporated.

Q. What was the name of the partnership that you were engaged in with Mr. Morrison?

A. It was M & G.

Q. What mines did the partnership of Ninth West Coal Company operate in the period of 1955 until the partnership went into a corporation?

A. You mean all of the mines that we ever operated, that we even worked there or—

Q. (Interposing) Yes, all of the mines that you have operated.

A. 79, I will give them by the numbers that way. Do you want an explanation of where they were at or—

Q. (Interposing) At this time just give us the numbers, please.

A. Mine No. 79, Mine No. 60, Mine No. 61, Mine No. 63, Mine No. 39, Mine No. 40, Mine No. 28. I believe that covers it, if I have missed one, why—

418 Q. (Interposing) What mine—

Mr. Kramer: (Interposing) Under what name, Mr. Walker?

Mr. Walker: Under Ninth West.

Q. Mr. Graham, in what name were the leases to these mines during this period?

A. They was in, I believe they was in my name for awhile and in later years they changed it and put it in mine and Mr. Travis, both.

Q. What mines did M & G operate?

A. That was in '58 that M & G took over. I believe there was a little bit of work in '54, '55 and, oh, 0-115, I believe is the number of that, I believe that that is about all. There could have been one or two or more that I don't remember just at this time. I have got so many numbers to remember of these different mines. That's my thinking right now of the only mines that we had at that time.

Q. Have you been engaged in the mining operation under a partnership or under a corporation at any time?

A. Yes, sir, I had Ninth West Coal, Incorporated, that was the latter, that was in '62, I believe that we incorporated this Ninth West. I was in Graham Coal Company, Incorporated. I was in A & R, Incorporated.

Now, that's the mines at Daus that I didn't mention that I was in, I didn't think of it at that time, but I am

419 telling you now I have thought of it, it's A & R Coal, Incorporated.

Q. What mines did Ninth West, Incorporated operate during the period that they were in operation?

A. You mean after we incorporated?

Q. After they incorporated in '62 what mines did they operate?

A. O-79, No. 40, No. 63 and a part of O.

Mr. Rayson: And what?

The Witness: Part of that "O", that me and John—

Q. (Interposing) What mines did Graham Coal Company, Incorporated operate?

A. We operated at Spring City, those mines we had, I believe it was 2, 3 and 5, I believe is the number of those mines, I could get them mixed, but they were about six there in all.

Q. What mines did A & R operate?

A. I believe it was Mine No. 24, I believe it was at Daus, Tennessee. Judge, I could get mixed on one or two of these mine numbers, what I mean I am giving them the best that I can remember.

Q. Mr. Graham, what was the manner that you operated your mines?

A. I leased, sub-leased to an operator and give him so much a ton to put in the hopper.

* * * * * * * * * *

422 Q. What discussions did you have with George Gilbert in regard to the provisions of the 1955 National Bituminous Wage Agreement or the amendment?

A. I told him, I said, "Now, George, we can't pay the 40 cents nor the full wage."

He said, "I know it. It has never been paid and it is—every operator was under the same condition I was."

Q. What did he tell you to do?

A. Go ahead and sign it and pay what you can and pay it, ever what you pay 40 cents per ton on the tons that you pay for.

* * * * * * * * * *

Q. Did you sign an authorization at that time to deduct the welfare on any new business?

A. Yes, sir, we had to before they would let us go back to work.

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428 Q. Did you change your mining or were the mining methods used at these mines changed in any way, the mines of Ninth West?

A. Yes, I put Mine No. 63, I put a cutting machine in it and a trolley motor, or we just had a battery motor there to start with and I got and put a generator set there and put a trolley motor and cutting machine in.

Q. What type of mines were these?

A. Hand-loading mines.

* * * * * * * * * *

430 Q. Did you join in the Mount Olive-Holly Branch association?

A. Yes, I was in that.

Q. Which one were you?

A. I believe it was Holly Branch.

Q. Did you take part in the preparation of the bids that were submitted by Holly Branch?

A. The only part that we had in that was that we talked over what we could get for it and Tri-State is the one that put that bid in for us and Tri-State Coal Sales, they bid for people and put—they was the ones that bid it.

Q. Did Holly Branch receive a contract from TVA?

A. Yes, they did.

Q. Did you participate in the filling of that contract?

A. Yes, sir.

Q. Do you recall when you obtained that contract?

A. I believe it was in '58, I don't know just the date on that.

431 Q. Were you sued by the United Mine Workers Welfare Fund?

A. Yes, sir.

Q. Do you recall when you were sued?

A. I was sued in '58, I don't remember the month that I was sued in.

Q. Were you sued before or after the Holly Branch contract was awarded?

A. Right after it.

Q. Did you sign the 1958 Amendment to the National Bituminous Wage Agreement?

A. Yeah, I guess I did under the same conditions that I told you awhile ago of having it understood and telling them that I couldn't pay the 40 cents and the full wage scale, I never signed one unless I would tell them, I would tell George or the representative that was there at the time we signed.

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481 J. H. GRAHAM,

a plaintiff, . . . was recalled and testified as follows:

* * * * * * * * * *

495 Q. What was the method of operation or mining operation that was used in the A and R Coal Company, Incorporated, mine?

A. That was what they call a mechanized mines, that's where you used cutting machines, shuttle cars and, of course, coal cutting machines and loading machines to load the coal.

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497 CROSS EXAMINATION

By Mr. Rayson:

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502 Q. Well, now, let me get this straight. Didn't you have some mines at the time you formed this partnership?

A. Yeah, I had that 52.

Q. How many mines did you have that you put into Ninth West when Ninth West was first started?

A. I believe I had 79, that was the first one.

Q. You had one mine?

A. Yes.

Q. When you and Travis went together, is that right?

A. That is, I couldn't say that that is right but I know

we had that mine and might have had—I believe it
503 was 60 mine was the next mine that was open, I am not for sure.

Q. Now, Mr. Graham, how long had you operated Mine 79 before Mr. Travis became your partner?

A. Well, I started operating it, I think, in '54.

Q. Had you equipped the mine before you and Mr. Travis became partners?

A. I had some equipment in it, yes, sir.

Q. And you put this mine in and this equipment in the partnership, is that correct?

A. That's right.

Q. Now, did Mr. Travis pay you anything for that?

A. Yes, sir, he give me his part.

Q. Well, what was his part?

A. Whatever we figured it was worth at that time, I can't remember back years ago.

Q. Well, was it $500?

A. I wouldn't say because I—

Q. (Interposing) Would you say it was less than $500?

A. I wouldn't say it was less or I wouldn't say it was more.

Q. You don't have any vague idea of what it was?

A. I haven't a vague idea of that, back that far.

Q. You are telling this Court that you were the operator of a mine for two years and that you equipped it
504 and yet you don't have any vague idea of what you had invested in that mine, is that right?

A. I never said I had no vague idea, I said I didn't remember the price that we set on the mines at that time.

Q. You don't have any idea about it?

A. I don't know the price.

Q. I am not asking you for the penny or the dollar, I am asking you for an approximation of what Mr. Travis paid you for your interest in that mine.

A. I told you he paid me half of what it was, ever what it was and I don't know.

Q. You don't remember what it was?

A. No, I don't.

Q. All right. Well, did you suddenly get a lot more mines om Tennessee Products after Mr. Travis became your artner?

A. Well, I got mines all along, yes, sir.

Q. You had more of the hand-loading mines than anyone se over there on Products, didn't you?

A. I guess I had as many.

Q. You and Travis together, that is.

A. That's right, we was together.

Q. What did you do with respect to operating these mines, Ir. Graham, did you oversee them?

A. I had operators that we subleased the mines to 05 and paid them so much a ton to put in the hopper.

Q. Did you take care of the finances of the mine?

A. You mean paying?

Q. Paying the operator, paying your lessee?

A. Yeah, we paid.

Q. Well, did you do that or did Mr. Travis handle that?

A. I done it.

Q. What else did you do besides that?

A. Well, I would go get supplies and bring them back if they needed them.

Q. You would furnish the supplies?

A. Yes, sir.

Q. Did Mr. Travis also do that?

A. Yes, sir.

Q. Did he carry supplies back and forth to these mines?

A. No, sir, he didn't.

Q. You did it?

A. I say he didn't.

Q. I say you did, though?

A. Yeah, I hauled supplies to the mines.

Q. Well, what else did you do now besides look after the money and haul supplies back and forth?

A. Well.

506 Q. Anything?

A. I just kind of looked after the whole operation.

Q. You were the man on the job, so to speak, is that right?

A. Well, I would go from mine to mine checking on them. I didn't work inside of the mines or anything like that.

Q. Well, now, what did Mr. Travis do?

A. What did he do?

Q. Yes. What did he do about running these mines?

A. He turned that over to me and if I needed or wanted to ask him any advice, why, I would ask him.

Q. In other words, Mr. Travis got half of the profits, didn't he?

A. Yes, sir.

Q. And you did the work and he got half of the profits, is that right?

A. Well, I wouldn't say that I done all of the work, what I mean he was some help to me.

Q. He gave you advice when you asked for it, is that right?

A. Yes, sir, that's right.

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507 Q. He was sort of your friend in the company's office, wasn't he?

A. Well, we wasn't at outs, we was friends, I'd say yes.

Q. What other financial transactions have you had with Mr. Travis?

A. Other than the mining business or what are you talking about?

Q. In the mining business.

A. Well, I just stated that we was in the business in Spring City, Tennessee.

Q. Did you buy some interest from Mr. Travis in another group of small or another group of hand-loading mines on Tennessee Products' property?

A. Yes, sir, I did.

Q. What interest was that?

A. With Mr. Morrison known as the M and T Coal Company.

Q. You bought the Travis interest in the M and T Coal Company, is that it?

A. Yes, sir.

Q. And then it became M and G?

A. That's right, yes, sir.

Q. Do you remember what you paid Mr. Travis for that?

508 A. No. The deal was this, they had a little bit of money in the bank, I put the amount, I gave him the amount of money that matched the amount that Mr. Morrison had in the bank and I was to operate, help Mr. Morrison to operate the mines and pay him on the ton, per ton we run or pay him, give him that much until the mines was worked out for the mines.

Q. Was the mine of M and T then in the process of working out, Mr. Graham?

A. Most of them was, some of them wasn't, most of them was in the process of working out.

Q. And so you put up an amount of money to Mr. Travis when you went in there?

A. Yes, sir.

Q. And in addition to that amount of money Mr. Travis was to get some sort of override from you and Mr. Morrison on a tonnage basis?

A. From me, not from Mr. Morrison.

Q. From you?

A. Yes, sir, from the part I had, yes, sir.

Q. From your part of the M and G profits, is that right?

A. That's right, yes, sir.

Q. All right. Now, how much money did you put up to start with?

509 A. I believe, to the best of my recollection, it was 250 or $500, I couldn't be for sure.

Q. This was for the initial payment you made for one-half interest in the M and G Coal Company?

A. That was the payment.

Q. Is that the payment for the whole thing?

A. No, sir.

Q. Just the initial payment?

A. Just a payment down, you might say a down payment, just like you would make a down payment.

Q. All right. How much were you to pay Travis per ton for the balance?

A. I told him, the deal I made, I said, "I will give you half of what I make on the rest of it until the mines is worked out, then I will give you half of what the equipment that we come out with."

Q. So you were actually in the process of liquidating or closing out the M and G Coal Company when you acquired it?

A. No, not until the mines worked out, I wasn't.

* * * * * * * * * *

520 Q. Do you know what wages were being paid?

A. Yes, sir.

Q. What wages were being paid?

A. $2.015 an hour, I believe.

Q. Is that the minimum wage under the Walsh-Healey Act?

A. I believe that's right, yes, sir.

Q. You were paying the least you could under the
521 law, is that what you are telling this Court?

A. No, I haven't told this Court that. I said I paid $2.015 an hour.

Q. Where did you sell this coal?

A. Tennessee Products. You are talking about the A and R?

Q. A and R, yes, sir.

A. Tennessee Products.

Q. Do you know what Tennessee Products was doing with this coal?

A. They had a contract with TVA, I think, at that time.

* * * * * * * * * *

Testimony of J. H. Graham Recalled—Cross

526 Q. Did you take the coal of your other operators on this property, Mr. Graham, did you buy their coal?

527 A. Yes, sir.

Q. Did they sell any of their coal other than through you?

A. Not as I know of at that time.

Q. Was that a part of your agreement with them that they would give you their coal?

A. Yes, sir, to go in on this contract that we had.

* * * * * * * * * *

Q. How many of your mines on the Tennessee Products' property have worked out, Mr. Graham?

A. No. 39.

Q. How long did it take you to work that mine out?

A. No. 60.

Q. How long did it take you to work out No. 39?

A. Offhand I'd say four or five years, I really don't know, what I mean so many little things like that you can't hardly just remember every little detail that way.

Q. What about No. 60 then, did you say you had worked that one out?

A. Yes, sir.

Q. How long did it take you to work that one out?

A. About four or five years, I guess.

528 Q. Any others?

A. Yes, sir, worked out 52, that was one that I had.

Q. When did that work out?

A. I believe that worked out in about probably '57 or '8, somewhere along there, I think.

Q. Was four or five years about the standard for these mines?

A. Not necessarily, no, sir, it's according to the territory that you got given to you in the mine, what I mean—

Q. (Interposing) Some of them are less?

A. Some of them are less, some of them more.

Q. Was that a good average, four or five years?

A. Five or six was a good average, I guess, for those small mines.

Q. Now, you had some problems about your Mine No. 40 didn't you?

A. Some problems?

Q. Didn't you have some arguments with the company about that?

A. I don't understand exactly what you are talking about.

Q. You know what I am talking about when I say Mine No. 40, don't you?

A. I know where Mine No. 40 is, yes, sir.

Q. I will ask you if the company hadn't closed that
529 mine down and stopped you from operating that mine in 1961 and in 1962?

A. No, sir.

Q. You don't recall that?

A. We operated it, we sure did, Mine No. 40 operated.

Q. Didn't you or didn't, rather, Mr. Travis then have some conversations and exchange of letters with Mr. Human about the right of your company to operate this Mine No. 40?

A. About the right to work it?

Q. Yes, sir.

A. They never did cancel that until '60, I mean '64.

Q. I want to show you a letter written on April 7, 1962, from Mr. Travis to Mr. Human.

Before you read that, Mr. Graham, let me ask you a couple of other questions. Was Mr. Travis working for Tennessee Products in 1962?

A. No, sir.

Q. Do you know when he had left them?

A. I believe he left in '60, now, I believe that is pretty close.

Q. Do you know whether he left voluntarily or whether he was discharged?

A. I believe he was discharged.

Q. Now, this Mr. Human, did he take his place after
530 that, or at least had he taken his place in 1962?

A. Yes, sir, he was in his place at the time.

Q. I will ask you to read that letter and see if that refreshes your memory as to the controversy between the company and Ninth West concerning Mine No. 40?

A. This letter is talking about adding extra territory of robbing 3rd right entry in Reel's Cove.

Q. Well, did you not, your company, Ninth West, and Tennessee Products have an argument about this in 1962?

A. We didn't, we had some changes made in the lease that you have got there that they come out with with this addition of the 3rd right on it.

Q. And didn't the company stop you from operating in there for several months?

A. No, sir.

Q. Did not?

A. Not Mine 40.

Q. Were you familiar with that letter at the time it was written?

A. Yes, sir, I think I have seen the letter.

Q. Do you know that it was sent to the company by Mr. Travis on behalf of your company?

A. Well, I don't. What I mean is I can't remember every little item. I remember the discussions about this 3rd right and when the lease come up, yes, but as far as him
531 shutting us down on it, we wasn't shut down on it. You are wrong about that.

Q. Are you able to identify that letter, Mr. Graham?

A. Huh?

Q. Are you able to identify that letter and say that it was sent?

A. Well, I never—I didn't see him send it, I will put it that way.

Q. All right. I will not offer it through this witness then.

Mr. Graham, did I understand you to say that you were familiar with this letter?

Testimony of J. H. Graham Recalled—Cross

A. I said I was familiar with some of the stuff in the letter, that we had discussed that that is in this lease that we have got down there.

Q. Do you recognize Mr. Travis' signature?

A. Yes, sir, I think that's Mr. Travis' signature.

Q. And Mr. Travis was your partner at that time?

A. Yes, sir, that's right.

Mr. Rayson: Your Honor, we offer this letter as an exhibit to Mr. Graham's testimony.

The Court: All right.

Mr. Rowntree: We have no objection. I think the letter ought to be read, though, to explain what the situation was.

The Court: Exhibit No. 91.

532 (The letter referred to above was marked D-91 and received in evidence.)

Mr. Rayson: The letter is dated April 7, 1962, addressed to Mr. Howard Human, Tennessee Products and Chemical Corporation, Whitwell, Tennessee, and is signed by Mr. W. J. Travis.

I'd like to read this paragraph of the letter.

* * * * * * * * * *

Mr. Rayson: Your Honor, I think rather than just putting this in the record piecemeal I will read it all. This is:

"Re: Mine Lease No. 4-040.

"Dear Mr. Human:

"We cannot agree with your letter of March 30, 1962, in reference to the 3rd right entry of the above lease. An agreement was made in August of 1960 to include the 3rd right entry to the above lease. The 3rd right entry was added to this lease under the following conditions:

"(1) The solid work in the No. 4-040 mine was about finished in August of 1960. In order to rob the 3rd
533 right entry it would be necessary for the mine to do some robbing on a small scale and even to close down until Reel's Cove completed its work in 3rd right.

"(2) It would be necessary to run a power line into the

4-040 mine since it was anticipated that power at Reel's Cove would go off when company operations ceased.

"(3) It would be necessary to install a locomotive at the mine.

"The three conditions were agreed on and the 3rd right entry rob work was added to the No. 4-040 mine.

"The power line was completed in February of 1961 and a battery locomotive was installed.

"I am sure you will agree it would not make sense to spend the money necessary for the above installation after the No. 4-040 mine was worked out with mule haulage.

"The agreement to add the 3rd right entry to No. 4-040 was a verbal agreement that was made after several discussions with Daffron, Kelley, Graham and myself. Every one was in agreement on No. 4-040 being the logical mine to rob this entry. It has been past practice for years to let the small mines pick up any rob work of the old mine entries, where it was practical without changing lease agreement.

"A considerable amount of money has been spent in laying rail and cleaning up rock to mine the coal in
534 3rd right.

"You advised us on approximately November 16, 1961, to hold up on tracking up 3rd right until the Reel's Cove Mine was finished. We closed the mine and have spent considerable money keeping the mine in shape, rebuilding the fan house, and so forth.

"For some unknown reason you have been applying pressure on Graham and myself from every angle and in every way you possibly could, even asking the District Union official to force certain conditions and changes on us. We have made every effort to cooperate with you but it seems impossible since the cooperation has been a one-sided effort. Some of your own people have advised me you wanted to take the 3rd right territory away from Ninth West Coal Company. If you would prefer someone else

to work this area, it can be arranged by reimbursing Ninth West Coal Company for its expense in this matter.

"I would not advise you to try to take this area from us, as stated to you before, I will make effort to work and cooperate with you, but I ask that you give us the same consideration. I do not ask for preferential treatment, I ask for only fair treatment.

"Every day we are down at No. 4-040 mine, we are being damaged. We have been ready to start production at this mine since the company equipment was moved out of 3rd right.

535 "We have no objection to adding the 3rd right area to our present lease agreement, if it would serve any purpose from the company's standpoint, however, we will not sign the lease you gave Graham, as no other sane person would. Anyone who is familiar with rob work in old abandoned entries of the Sewanee Seam would not sign this lease with the changes you have made.

"If you would care to discuss any part of this letter or anything concerning the above mine, please contact me and I will meet you at your convenience.

"Very truly yours, W. J. Travis."

By Mr. Rayson:

Q. Now, Mr. Graham, I take it from this letter that you were closed down at Mine No. 40 for a period of weeks or months?

A. In making some changes of the fan house and moving the motor that had been down a while.

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Q. But you do recall now that you were closed down for a while?

A. I would say we was down for a while in repairing the fan house, yes, and some repairs, but how long I don't

536 know.

Q. And the reason you were closed down was because the company directed you to be closed down?

A. I don't remember that they told us to shut down, I don't remember that.

Q. Do you remember when you started back?

A. No, sir, I don't.

Q. Did you ever start back?

A. Yes, sir.

Q. Did you ever sign a lease for No. 40?

A. Yes, sir.

Q. Did you sign a lease after this letter of April 7th from Mr. Travis?

A. The date is on the lease there when I signed it, I don't remember.

Q. Did the company change the lease after this letter from Mr. Travis?

A. Yes, sir, certain parts of it was changed.

Q. But you don't remember how long you were down?

A. No, sir, I don't.

Q. Do you remember the pressure the company was putting on you to get you out of there?

A. Well, all I say that they didn't they didn't cancel me out, I was working at the end of '62.

Q. Did you think that Mr. Human wanted to give
537 that mine to somebody else?

A. I can't tell you what he thought.

Q. Did you accuse him of wanting to give the mine to someone else?

A. I didn't.

Q. Did somebody do that on your behalf?

A. You read the letter.

Q. Did Mr. Travis accuse him of wanting to give this mine to somebody else?

A. He stated in his letter it looked like he did.

Q. Did Mr. Travis say who he thought he wanted to give this mine to?

A. No, sir, not so far as I know, I don't know.

Q. Did Mr. Travis ever say why he thought Human wanted to get you folks out of there and put somebody in?

A. No, sir, I don't know if that was discussed between me and him.

Q. Do you remember when Ninth West Coal Company first started to take out workmen's compensation insurance on its employees?

A. Started to take it out?

Q. Yes, sir, pay for it.

A. Well, now, the company held out the insurance, you know, a while and away back yonder we paid ourself Bituminous Casualty, I think that's right, and then the
538 Bituminous Casualty moved and the company held out the insurance, I believe it was on the tonnage basis.

Q. Did you subsequently take it out yourself in 1960 and '61?

A. On the coal that I was shipping to Penn-Dixie direct, I paid to the company the insurance and they paid the insurance company just like I paid the royalty.

Q. But before that you had not had the financial obligation to pay directly for workmen's compensation insurance, is that correct?

A. No, sir, at one time when Bituminous Casualty was there, the man that was operating the mines or owned the mines, he paid the company direct, but then after this new company come in, it was set up that the company would withhold the insurance for them and the company would pay them.

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543 W. T. MORRISON,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Would you please state your name, sir?

A. W. T. Morrison.

Testimony of W. T. Morrison—Direct

Q. Where do you live, Mr. Morrison?

A. I live in Whitwell.

Q. Have you ever been engaged in the coal mining business?

A. Yes, sir.

Q. When did you first enter into the coal mining
544 business?

A. I believe it was '46.

* * * * * * * * * *

Q. And when you started operating in 1946, what type of mines were you operating?

A. Truck mine.

Q. And in what name were you operating at that time, sir?

A. I believe when we first started we started under Morrison and Levan, a brother-in-law of mine.

Q. And where were you mining?

A. Well, on the mountain at Whitwell, what we call the Second Branch near Reel's Cove Mine.

Q. On whose property was this mine located?

A. Tennessee Products.

Q. Were you operating union or non-union in those
545 mines?

* * * * * * * * * *

Q. I will ask you if you can recall signing the National Bituminous Wage Agreement of 1950?

A. Well, I have signed them all.

Q. And do you recall where you signed the agreement or any particular thing that arose at the time you were signing the agreement?

A. I don't know where I was when we signed the agreement but we had had some trouble, labor trouble, and before they would okay you to go to work, I believe this is the way it was, you had to show that you had paid your welfare.

Q. Who did you have to show that to?

A. Well, I showed this to Mr. Condra, Allen Condra.

Q. And who is Mr. Condra?

A. Well, he was either a District or an International man, I don't know which.

Mr. Combs: May I inquire, your Honor, now what contract, what date you are talking about? I can't follow
546 this without that.

Mr. Walker: The National Bituminous Wage Agreement of 1950.

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Q. Did you have any discussion with Mr. Condra at that time regarding it?

A. Well, we had—we was informed we would have to go to the local or make it right before we could operate or show them that we had paid welfare and we wasn't at the local hall but it was out at what we call Dogwood Flat on the Pocket Road in a picket line.

Q. W. T., do you recall the signing of the National Bituminous Wage Agreement of 1952?

A. Yes, I signed them all.

* * * * * * * * * *

548 Q. Do you recall signing the National Bituminous Wage Agreement of 1955?

A. Yes, sir, I do.

Q. Where did you sign that agreement and with
549 whom?

A. I signed it over to the supply house for Tennessee Products and I signed with Mr. Gilbert.

Q. Did you have any conversation with Mr. Gilbert at that time?

A. Yes, I did.

Q. What was the nature of that conversation?

A. Well, they had a meeting but I wasn't at the meeting, I got there a little late and they were signing men up for the contract and during this time, why, the union wouldn't want us to go to work until we agreed to let the company or the company agreed to cut the Welfare Fund, I believe that is right, and George told me he thought we

ould like it better by having it done that away and I said, George, this here is a little rough."

He said, "Well, Dude, you just do just like you have een doing, do the best you can." He said, "I think we'll ke it better this way." He said, "The company is going take it over on you on new business." Said, "We have greed to that."

I said, "All right."

* * * * * * * * *

50 Q. What was the manner that you had been paying your welfare in the past prior to this time?

A. Well, we paid it just what we thought we could.

* * * * * * * * *

51 Q. Were you a member of any association of coal mine operators during the period of '56 through '59?

A. We formed, I believe, what we call Mt. Olive-Holly Branch. I don't know what you call that but we did that o bid on coal.

Q. What was the purpose of this Mt. Olive-Holly

52 Branch?

A. Well, we didn't have no way of selling coal.

Q. I didn't hear you.

A. We didn't have no way, we didn't have no business with the TVA and we couldn't spot bid and we got together and got, I believe it was Tri-State, I believe, to bid for us.

Q. Do you recall which association you belonged to?

A. I was in both of them.

Q. In both of them?

A. Um-hmm.

Q. Did you have mines in both areas?

A. In both areas.

Q. Was the bid submitted in behalf of Mt. Olive-Holly Branch successful?

A. Yes, I think it was.

Q. Do you recall when you obtained your contract?

A. No, I don't.

* * * * * * * * * *

554 Q. What was the type of mining that you were carrying on in the mines operated by M and T and M and G?

A. Well, they were hand-loading mines, all of them.

Q. Explain to us what a hand-loading mine is.

A. Well, that is where the men shoot and load their own coal, it's not undercutting or nothing like that but just shooting from the solid.

* * * * * * * * * *

555 Q. Handing you, Mr. Morrison, a paper entitled
556 'Contract and Agreement'' with reference to the mine and Contract No. 54, entered into by Tennessee Products and Chemical Company, and ask you if you can identify this, please, sir?

A. Yes.

Q. Did you sign the contract and agreement?

A. That's right.

Q. Will you enter that as an exhibit to your testimony?

The Court: Ninety-three.

(The agreement referred to above was marked P-93 and received in evidence.)

Q. Handing you several contracts and agreements covering Contract No. 55, Mining Contract No. E, RC-12, Mining Contract No. 0, Mining Contract No. V-6, Mining Contract V-1, Mining Contract No. V-2.

A. I believe you had one there 65, I don't think I ever had a mine 65, may have been the wrong number on it.

Q. Would you examine these and see if you can identify them, please, sir?

* * * * * * * * * *

557 Q. The agreement and contract, whereas the party previously entered into an agreement dated blank, designated Mine and Contract No. V-2.

A. V-2?

Q. Yes, sir. I ask you if you signed that contract and agreement there?

A. (Witness moves head up and down.)

Q. Did you sign each of those?

A. Yes, sir.

Q. Each of those contracts and agreements?

A. Yes, sir.

Q. Will you make those a collective exhibit to your testimony, Mr. Morrison?

A. (Witness moves head up and down.)

The Court: Ninety-four.

(The agreements referred to above were marked P-94 and received in evidence.)

Q. In the partnership that you had with Mr. Travis, Mr. Morrison, what were your responsibilities?

A. Well, we were partners and I looked after the work the best I could.

Q. I didn't hear you, sir.

A. I looked after the work.

Q. When you say you looked after the work, what
558 do mean?

A. What I meant by that, we leased to different people and I saw that they had supplies and that they worked according to the rules and regulations and in compliance with the state law.

Q. Did you furnish anything other than the mine hole to dig the coal out of?

A. Sir?

Q. Did you furnish anything other than the mine, itself?

A. Yes, sir, we furnished the equipment.

Q. After you went into the new partnership of M and G what were your duties in that partnership?

A. Well, just about the same.

Q. Did you change your method of operating the mines in '58?

A. Sir?

Q. Did you change your way of operating?

A. Method of mining?

Q. Yes.

A. No.

* * * * * * * * * *

566 CROSS EXAMINATION

By Mr. Owens:

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573 Q. Then you stopped operating then in 1950, is that correct?

A. Yeah.

Q. And you haven't operated a coal mine, since then, have you?

A. Just leased them.

Q. Just leased them. And you haven't been a coal operator since then?

A. Well, I am the one that furnished the stuff for the mines.

Q. But you didn't operate the coal mine, did you?

A. But I had them operated.

Q. You had them operated?

A. Leased them out.

Q. You leased them out?

A. That's right.

Q. To somebody else?

A. Yes, that's right.

Q. And that you were not a coal operator from 1959 on?

A. I didn't actually operate the mines, I didn't have the work done, but they were my leases.

Q. And you didn't have any employees?

574 A. The man that leased them, he had his own employees.

Q. And you didn't have any of them, did you?

A. No, sir.

Q. And you didn't actually furnish any supplies to any of them, did you?

A. Sir?

Q. You didn't furnish any supplies?

A. Yes, I furnished all of the supplies.

Q. You furnished all of the supplies?

A. Yes.

Q. What did you furnish?

A. Well, rail, spikes, timbers, mules, mule feed, harness, anything that you had to have, cars, pumps, motors, fans, whatever.

Q. Did you lease that to them?

A. Sir?

Q. Did you lease that to them?

A. No, I furnished that.

Q. But you leased it to them, didn't you?

A. No, I didn't lease it to them.

Q. What did you lease?

A. I just let them have the mines to run.

Q. Now, let me ask you if you didn't also testify in another case when you were sued by the Welfare Fund that you never bought tools, never bought any rock dust,
575 you didn't furnish any supplies, you didn't furnish any replacement parts?

A. No.

Q. You never testified to that?

A. I don't think so.

Q. Do you remember testifying?

A. I sure do.

Q. You remember that real well?

A. I think I do, I remember the time.

Q. All during this time that they took your testimony you were insisting that you didn't operate any of the mines, had nothing to do with them?

A. I did not operate the mines, I leased them to fellows and they operated, that's right.

Q. Let me ask you if they didn't ask you this questions: "Who supplied the rock dust at these mines?"

Mr. Walker: Would you please identify from what you are reading, please?

Mr. Owens: Well, I am asking him if they didn't take

his deposition on November 30, 1950, when you were sued by the Welfare Fund, or 1959, is that correct?

The Witness: What date?

Q. November 30, 1959.

A. I don't remember.

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576 Q. If this question wasn't asked you:

"Who supplied the rock dust at these mines?"

What did you answer?

A. I don't know if we was rock dusting at that time.

Q. I didn't ask you that. I asked you what you answered at that time, Mr. Morrison, not about some other thing.

A. Well.

Q. Let me ask you if you didn't answer, "The men bought it."?

A. That was the operator must have bought it at some mine.

Q. Let me ask you the next question, "That is, the individual employee?"

577 You answered, "The man we had it leased to."

Did you answer that that way?

A. Well, if it's down there I imagine that I did.

Q. Do you deny that you answered it that way?

A. I wouldn't deny it nor confirm it either.

Q. Then they asked you, "Was there ever a time when you would go out and buy it, supply it to them?"

And you answered, "No, sir."

A. Supply what now, rock dust?

Q. Yes.

A. I don't remember if I ever bought any.

Q. Then they asked it again, "Was there ever a time you would buy it, supply it to them and then deduct it from the tonnage?"

You answered, "No, I don't think I ever bought any."

A. I guess that's right.

Q. And you never did, did you?

A. I don't think so.

Q. Then they asked you this question, "Did you ever buy any tools at all and deliver them down to the mines?"

Did they ask you that question?

A. Any what?

Q. Did they ask you this question, "Did you ever buy any tools at all and deliver them down at the mines?"

578 A. They furnished their own tools, we maybe bought drills or something like that.

Q. And you answered, "No, they furnished their own tools."?

A. That's right.

Q. Isn't that right?

A. That's right.

Q. Also didn't they ask you this question, "Who supplied the—what kind of an investment did these individuals have in the mines, say Mr. Johnson, for instance?"

Did they ask you that question?

A. I think so.

Q. What did you answer?

A. I guess I said no.

Q. You said what?

A. None, I said none, I guess.

Q. Well, is that right?

A. Well, I think it would be, he may have had bought a mule or something like that but I don't think he had anything but his tools or something like that.

Q. And you answered, "Well, they had their own tools and things like that."

A. Yeah.

Q. And then, "What did the tools consist of?"

And you answered, "Well, it consisted of picks,

579 shovels, augers and maybe drills. Some of them owned their own electric drills and things like that."

And then this question was asked, "Who supplied the replacement parts of that equipment?"

What did you answer to that?

A. The question again, please?

Q. "Who supplied the replacement parts of that equipment?"

A. Well, they did.

Q. Well, then why did you answer a little while ago that you did that?

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Q. Why did you answer a little while ago that you did that then?

A. That I did what now?

Q. When I first asked you that you testified that you supplied that, now that I have read your deposition you say no, that you didn't. Why have you changed your testimony?

A. Well, now, I tried to tell you what I furnished at these mines, the tipples, the rails, spikes and things like that, but the men furnished their own tools.

580 Q. All through this deposition they took you were insisting that you were not a coal operator.

A. I did not operate the mines, I just leased them to these fellows.

Q. You didn't do anything?

A. Just look after it and seen that they were at work.

Q. Do we have to go through and read this deposition on what you testified then that you did?

A. Sir?

Q. Do we have to go through here and read all of these things of what you testified under oath when you said that you did not operate these mines and you didn't do anything about them?

A. I did not operate the mines, I didn't hire the men, I hired the men that operated the mines, that's all.

Q. Did you testify at this deposition to the following, that you didn't operate no mines at no time?

A. Not after '50 or '51, I don't think I did.

Q. Did they ask you if you ever inspected the mines?

A. I guess they did.

Q. What did you answer?

581 A. I said yes, sometimes. Did I or did I not?

Q. Well, what did you do?

A. I went in the mines and made inspections.

Q. Well, what did you answer when they asked you that?

A. Well, I guess I said yes.

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By Mr. Owens:

Q. Mr. Morrison, I believe I was asking you before

582 lunch about your testimony in regard to what work you did at these mines. I was asking you if you didn't testify previously when they took your deposition that you didn't do any work at these mines.

A. Didn't do any labor.

Q. You just went around?

A. Went around.

Q. Inspected them. You didn't do anything after you got there, did you?

A. Sir?

Q. You didn't do anything at the mines after you got there, did you?

A. Not only just whatever they asked me about.

Q. What did they ask you to do?

A. Well, sometimes they wanted something, you know, why, I would see that they got it and things like that.

Q. Now did you say you signed—that you had a strike in 1950 over signing the contract at these mines?

A. Well, I don't think it was over the signing of the contract, I think we had signed the contract but you had to go by to see whether you was up with your welfare before they would let you go to work, I think that is the way it was.

Q. Well, didn't that occur in 1952?

A. Well, I don't know whether it was '50 or '52,

583 somewhere along there.

Q. Could have been in '52?

A. Sir?

Q. It could have been in '52?

A. Well, somewhere along there, been a long time.

Q. Didn't you go to them and ask to sign the '52 amendment to the contract and you had to produce your books and records to show that you had paid the Welfare Fund?

A. I had to produce the welfare.

Q. And then they would, you would sign the '52 agreement?

A. Well, I think, I don't know whether I had signed it before that or after, but I didn't sign it on that particular day, I don't think.

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585 Q. All right. Then in '55 you had, you say, another work stoppage?

A. Yes, sir.

Q. What was that about?

A. Well, that's when the contract expired.

Q. And they wouldn't sign a contract with you until Tennessee Products would agree to withhold the Welfare Fund?

A. That's right.

Q. And then you went to them and asked them to sign that contract, didn't you?

A. Sir?

Q. You asked the union to let you sign that contract?

A. No, I don't think so.

Q. You didn't want to sign the 1955 contract?

A. Well, I don't think I had an opportunity to.

Q. Didn't you elect Mr. Gibbs and someone else to go intervene to get to sign the contract?

A. I don't remember.

Q. You don't remember that?

A. About that, no.

Q. Didn't the union refuse to sign the contract until some provision had been made?

586 A. I think that's right.

Q. To insure payment of the increase in wages?

A. I think that's right.

Q. And to insure payment of the Welfare Fund?

A. The Welfare Fund.

Q. After that was done then they let you sign the contract?

A. Yeah.

Q. And went back to work?

A. Yeah, I don't remember how many days it was after that but, anyhow, that's when it was.

Q. And then when was the next work stoppage, if any, at any of your mines that you had subcontracted?

A. I don't remember.

Q. Let me ask you this, going back to '55, how many mines did you have under lease from Tennessee Products?

A. Well, I don't know exactly, but I had several.

Q. Most of them had worked out about that time, hadn't they?

A. Not in '55 they wasn't.

Q. Well, when did they start working out?

A. Well, I think about that time in '55 is when I put all of the WT mines in with M and T, I believe that's right. I had a few mines myself.

Q. Well, when did they start working out?

587 A. Well, we have had them to work out from the time we started on down.

Q. But you finally got down to about '57 and you only had one or two, isn't that right?

A. Fifty-seven I had—'54 and '55, I believe, Mine M, I believe it was, and Mine O, I believe that's right, RC-12, well, that might be the list of them, I don't know.

Q. When you got down to '59 you only had one mine, is that correct?

A. Fifty-nine, let's see, '59, yeah, I think that is what I had at that time.

Q. Mr. Travis told you at that time that they were not going to operate any more hand-loaded mines?

A. Yeah, somewhere along like that.

Q. That's when you went out of business?

A. Yeah.

Q. Now, what was your agreement with these sub-contractors?

A. We paid them on the tonnage basis.

Q. Tonnage basis?

A. Yes, sir.

Q. How did you pay it?

A. Sir?

Q. How did you pay it?

A. On a tonnage basis, what coal they run from
588 their particular mines, why, we paid them a tonnage basis for it and they paid their men.

Q. Then they paid their men?

A. Yes, sir.

Q. Just how did you do that?

A. Well, each mine had a number and the trucker, when he delivered the coal into a designated point he would get his ticket and he would have that mine number on it and then our clerk would separate the tonnage and we would pay each man for the tonnage that he produced.

Q. Did he furnish you a list of the payroll and you actually got a check cashed and then you gave them all in cash?

A. Now, some of the men were Grundy County and some of these men were Marion County. We haven't got a bank at Whitwell and the only checks that we cashed for the men was after we wrote their checks, then I would go and get their checks cashed for them so they would have money to pay off their men when they came from work.

Q. And you then turned over cash to them?

A. I turned the cash over to them, I didn't ever touch the money but put it in a little bag at the bank and each man's statement with the number of tons and the price on the statement.

Q. And you gave him cash?

589 A. Sir?

Q. Then you gave him the cash?

A. I gave him the cash, a few of them, not all of them.

Q. What records did you keep to show that the men were making the contract rate?

A. Well, they was supposed to do that.

Q. Did they have a record of that?

A. Why, some of them did, I reckon.

Q. How about the Walsh-Healy?

A. They're all supposed to have it.

Q. You didn't keep any records?

A. No, sir.

Q. You don't know what they were paying then, do you?

A. I don't, but they was instructed, though, that they would have to come under Walsh-Healey.

Q. Now, you paid Mr. Travis the money prior to the time that he went into the partnership of M and T, didn't you?

A. I didn't understand.

Q. You were splitting your profits prior to M and T with Mr. Travis, weren't you?

A. No, sir.

Q. You weren't giving any of your money to Mr.
590 Travis?

A. You mean from W. T. Coal Company?

Q. Yes, sir.

A. No, sir.

Q. Did you also testify about that matter when the Welfare Fund took your deposition?

A. I guess I did if I was asked, I don't know.

Q. Well, what did you testify about that?

A. Well, if I—I don't recall but I did not give Mr. Travis no profit only out of M and T.

Q. Did you testify at the Welfare Fund deposition that you did give him some money, although you split the profit with him?

A. From M and T?

Q. No, prior to that.

A. Prior to that we didn't have any, he wasn't in it.

Q. Let me ask you if these questions weren't asked you in that same deposition we referred to:

"In other words, M and T Coal Company, I mean W. T. Morrison Coal Company, had also one of its principals Mr. Travis then, is that right?"

And you answered, "No, not with W. T., but these mines outside of these mines, like I said, got these leases and we done this business with these mines but I paid the checks, you know, and I signed the lease under W. T. but it
591 wasn't my individual mines. Then in '55 we quit doing business as W. T. Morrison, put the V-6 mine in with the others, don't you see, and then went to doing business under M and T Coal Company. That was in September, I believe it was, of 1955."

And the question, "You indicated now that M and T Coal Company did business under the trade style from 1955, September, 1955, on?"

You answered, "Individually that way, but we had mined before that. He shared in the profits like I did. In other words we would lease the land and then—or I did lease them to another feller and we were just in the coal business. We didn't produce the coal, we sold it, was agents for it."

Did you answer that way?

A. I might have been answering that way but what was meant by it that I had mines, W. T., Mr. Travis was not interested in W. T. until after M and T come in.

Q. You didn't pay him any money?

A. No, sir.

Q. Prior to that time?

A. No, sir, in fact of the business, I was in the coal business before Mr. Travis started it.

Q. Didn't they ask you this:

"Was Mr. Travis your partner at that time?"

"He wasn't in with W. T., I run it individually
592 myself, talking about, now, I had those mines before we opened those other mines."

"That would be 21 and V-1?"

"Answer: That is 21 and V-1.

"Question: But he was a partner with you in all others?

"Answer: Well, we shared profits.

"Question: Did you have a partnership arrangement?

"Answer: We just put the stuff in there and he had stuff and I did, too."

Did you answer that way?

A. Yes, sir.

Q. But you now say that he did not, you did not give him any money prior to 1955?

A. Not until we got in partnership. I am talking about now out of the W. T. mine. We had these other mines before '55.

Q. You had other mines before '55?

A. No, if you will find out that M and T was a doing business before '55, but we put the W. T. mines, I think it was in '55, into M and T.

Q. When did M and T start then?

A. About '52, I think, '1 or '2.

Q. You started your partnership then with Travis

593 in '52?

A. For M and T, '52 or '3, something like that.

Q. Now, you sold your coal to the Tennessee Products?

A. That's right.

Q. Now, did Tennessee Products have a separate contract just for your mines or did it include other mines?

A. Other mines.

Q. How did you know what coal was to go under that contract, how was it divided up among you operators?

A. Well, most of the time we had just whatever you could run.

Q. They took whatever you could produce?

A. That's right, took our output.

Q. You didn't have any share?

A. Sir?

Q. You didn't have any certain tonnage that you were to produce under each contract?

A. Not at the time, no, sir.

Q. You were paid so much a ton for that?

A. That's right.

Q. Now, were you paid a different price for the coal that went to TVA than for the coal that Tennessee Products sold to other individuals?

A. Well, prices would change but I don't know, only on what they paid us, I don't remember if it was dif-
594 ferent, why, sometimes we would get more and sometimes we could get less.

Q. But there wasn't any contractual arrangement as to where the coal went, whether it went to TVA?

A. No, not when we give it to them, why, let them have it.

Q. Sometimes they would raise the price that they paid you and sometimes they would lower it?

A. Well, different with maybe different contracts.

Q. Well, now, you signed the authorization for the Tennessee Products to check off the Welfare Fund 40 cents, didn't you?

A. Yes, sir.

Q. Was it for the full 40 cents?

A. Now, I don't remember about that, I wasn't interested if they could take it over how much it was, they would take it over that that would get me off the hook.

Q. That would get you off the hook?

A. That would get me, I wouldn't have to be responsible for it.

Q. And that was on all new business after 1955?

A. That was all new business, that's right.

Q. So they actually never checked off any Welfare Fund from your money you got then, did they?

A. They put that in a reduction, when we checked
595 it it wasn't specified but it was understood that they would take care of it for a certain price.

Q. Did they ever take care of it?

A. I wouldn't know about that.

Q. Well, after the contract ran out you formed a partnership, didn't you, with the other coal operators?

A. Yes, yes.

Q. And you were in the Mt. Olive and Holly Branch Coal Company?

A. (Witness moves head up and down.)

Q. And isn't that the reason that Mr. Travis said they were forming that partnership so that they wouldn't get any money, so they couldn't withhold it?

A. Well, I wouldn't know what he did.

Q. Well, did he tell you that?

A. No, we just got the contract.

Q. Well, now, who did you talk to about forming this partnership?

A. Well, we all talked it over.

Q. You got together and did this all by yourself?

A. Well, I think some of us tried to get some business from TVA but we couldn't unless we got—and I believe that Mister, Mr. Studer, I believe it was, or Mr. Mulkey or somebody.

Q. Mister who?

596 A. Mulkey, I believe was in with Studer, I don't know.

Q. What have they got to do with it?

A. They are Tri-State, they bid in the coal for Mt. Olive-Holly Branch.

Q. You got them to agree to do that, didn't you?

A. Well, they—not only me but it was agreed by Bunch or they got the business and told us how much they could get and one thing and another.

Q. Yes. But didn't you have an agreement with Tennessee Products that they would take your coal, that you had to sell all of it to them?

A. They agreed that we could sell it to Tri-State.

Q. Yes. But prior to that time did you have any conversation before you formed a partnership about selling it some other way with anybody from Tennessee Products?

A. I don't recall; I don't recall.

Q. You don't know?

A. I don't recall.

Q. Well, don't you know, Mr. Morrison, that you had to get Tennessee Products' approval in order to handle it any other way?

A. Of course, they would have to be approved but as far as me getting them to approve it, I didn't.

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597 Q. Who handled your partnership business for you, that is, the Holly Branch and Mt. Olive?

A. Well, there was a committee on it, it handled it, you might say, all but I believe that each mine bid on a certain amount of coal.

Q. Each mine bid on the coal?

A. I believe that's right, each operator for a certain mine that he had a certain number of loads or a certain number of tons per day, some of the larger mines had more tonnage than the smaller mines but it was agreed upon through the—just orally agreed upon that if a man couldn't produce his tonnage then he notified somebody and let them give it to somebody else, he just had a certain amount of loads a day as long as everybody was producing.

Q. Well, who was the chairman of that committee?

A. I was on one of the committees, I believe.

Q. Who was the chairman?

A. Well, I don't know as we had a chairman or not.

Q. Well, didn't you have some arrangement whereby the chairman of the committee was to get a certain amount of money on each ton sold?

A. No, we just had a certain amount, we all got the same price for it.

598 Q. Yes. But didn't you agree that Tri-State or TVA would withhold, say, 5 cents for expenses of the partnership?

A. I don't believe we had any expenses for the partnership, I don't think so.

Q. Did they withhold the 5 cents, even though you didn't have any expenses?

A. I don't remember now.

Q. How about 10 cents, didn't you also have an agreement that they would withhold 10 cents a ton to pay the Mine Workers Welfare Fund?

A. I just forget just exactly what the price was on that.

Q. But there was a certain amount that was withheld?

A. There was a certain amount stipulated.

Q. And it wasn't 40 cents?

A. I don't think so.

Q. And you also had a certain amount withheld to pay for the supervision of these mines, the foreman, is that correct?

A. At one time we had a foreman, Mr. Cunningham, I believe it was, and we paid him out of it.

Q. Then how much was Tri-State to get out of this?

A. Sir?

Q. How much was the Tri State Coal Sales Agency to get out of this?

A. I don't know about that, you see, they bid it
599 in and give us so much.

Q. You don't know what you agreed to pay them?

A. I think they held the royalty for Tennessee Products.

Q. They were to get some money out of it?

A. Who is that?

Q. The Tri-State people.

A. Certainly, they couldn't handle it for nothing.

Q. Why didn't you save this money that Tri-State was getting and the partnership get it and just bid it yourselves or have Tennessee Products bid it?

A. Well, you can't do that.

Q. Why?

A. Well, they are not going to give you no term contract just for one or two little mines.

* * * * * * * * * *

600 Q. Were you bidding on spot sales contracts at that time?

A. I don't know. I don't think I ever bid, maybe I had somebody to put some spot for me, I don't remember.

Q. Did you ever have any term contract?

A. No, sir, not with that, as far as I know of.

Q. You never had a term contract, you never produced coal under a term contract?

A. I produced coal, Tennessee Products bought the most of our coal.

Q. And they had a term contract, didn't they?

A. Well, chances are they might have had.

Q. You don't know?

A. They had Republic and different places, the coke plant down here, they owned a coke plant at this time and shipped coal there.

Q. Did you say that the partnership of Mt. Olive and Holly Branch, that that was just a coal selling company?

A. Well, we just bid it in together and made the amount of tonnage, then we tried to allot each man his pro rata part of the tonnage.

Q. How about the amount of money that the Tennessee Products was to get under this arrangement?

A. Well, they wasn't to get anything that I know of but the royalty on their coal.

601 Q. Did they get something to handle the insurance?

A. Let's see now, I don't know how that was worked out now, I can't remember.

Q. They got 67 cents or 69 cents?

A. I don't remember, I think they handled the insurance all right but I guess that was included in the royalty.

Q. You had tippling charges or something like that?

A. Well, they didn't have any tippling charges when we sold it to them that I know of.

Q. Now, the contracts that you placed in evidence that you had with Tennessee Products, may I see those?

The Court: Ninety-three and 94.

Q. Where did you get these copies of these contracts?

A. They come from the office.

Q. From your office?

A. From the company office, they issued them from the company office.

Q. I know. But where did you get the ones that you put in evidence here?

A. Well, they come from the company office.

Q. Well, what company's office?

A. Tennessee Products, that's where they was all issued from, the contracts were.

Q. Were these signed on the date that is shown on
602 the contract?

A. Sir?

Q. Were these signed on the dates as shown on these contracts or were they signed later?

A. I guess they was, I imagine they were.

Q. Why doesn't Tennessee Products and Chemical Corporation, why didn't they sign this?

A. Well, I wouldn't know about that.

Q. They never signed this contract, did they? Hand him the contract.

Mr. Rowntree: If your Honor please, if I may explain—this is cross, though.

A. This is witnessed by Jim Miller, he was working in the office and Willie Turner, I believe, they were working in Mr. Travis' office.

Q. That is a—let's see, what is the date of that contract, '59?

A. Let's see now.

Q. It is on the last page.

A. Well, this is '56.

Q. Fifty-six?

A. November of '56.

Q. Let me see that. This was the one on November of '56, this was never signed by Tennessee Products?

A. Well, that was their representative, Mr. Miller
603 was, I don't know about how the company was, whether they should put their name on it or not, but Mr. Miller worked in Mr. Travis' office.

Q. Mr. McFarlin, Jr. signed the original one of April o
'55?

A. Well, I don't know.

Q. And Mr. Miller witnessed it also?

A. Yes.

Q. And that was also approved by Mr. Travis. Did yo
negotiate these directly with Mr. McFarlin, Jr. or with Mr
Travis?

A. Well, we picked up the contracts at the mine, at th
office, for our lease.

Q. Now, after you formed the Mt. Olive and Holl
Branch Coal Companies, you didn't pay any Welfare Fun
then, did you?

A. I think so, I think they, the association paid some.

Q. Paid some?

A. Yeah, I don't know what.

Q. Why didn't you pay on your full tonnage then?

A. Well, I think it was understood that we didn't.

Q. You think it was understood?

A. Yeah.

Q. Who did you have the understanding with?

604 A. Well, we had it when we signed the agreement

Q. That was back in '52?

A. (Witness moves head up and down.)

Q. Is that right?

A. I guess it was.

Q. And you let that carry over from '52 on through '58

A. (Witness moves head up and down.)

Q. And then, though you knew Mr. Pass, did you know
who Mr. Pass was?

A. Yeah, I have seen him.

Q. Did you know he was a district official?

A. Yes, I know he was a district official but I don't know
whether he works out of the International or the district

Q. You knew that they wanted the full 40 cents paid
didn't you, after 1955 at least?

A. After '55 they wanted it.

Q. And there wasn't any pay as you can or what you can't at that time, was there?

A. After they got the new business, that's right.

Q. After '55?

A. That's right.

Q. But you continued?

A. After the new business came in.

605 Q. That is right. Well, that was the withholding on the new business?

A. Yes.

Q. Now, after that time and you got the new business you still didn't pay it, did you, you just said a little while ago?

A. Was that after we was sued?

Q. All right. It was before you were sued.

A. Well, you are talking ahead of me, I can't remember.

Q. Well, did you pay for it in '58 and '59 on the new contract you got through Tri-State?

A. The company held it.

Q. You paid on the full tonnage?

A. Well, I don't know about that.

Q. Well, you just said a little while ago that you didn't.

A. Well, I don't know about what they cut, whether they paid on the full tonnage or not, I wouldn't know.

Q. You couldn't tell?

A. No, sir.

Q. Well, didn't you know the price that you were to get for the coal?

A. The price we were to get?

Q. You knew what was being withheld and the

606 exact amount?

A. But when they was going to withhold it, that didn't show the price.

Q. You knew how much was being withheld, didn't you?

A. Well, I can't say that I did.

Q. You didn't know how much money was being withheld from you?

A. What we was interested in was the price of the coal and they were supposed to take care of the welfare.

Q. You were interested in what—you knew the price that TVA was going to pay for the coal, didn't you, Mr. Morrison?

A. Well, I think we did, yeah.

Q. And you knew how much Tri-State was going to get, didn't you?

A. Well, I don't know how much they were going to get.

Q. You didn't know at the time?

A. I don't think so.

Q. You didn't know how much Products was going to get either, did you?

A. No, sir.

Q. And you didn't know whether Tri-State withheld that money or not?

607 A. Well, now, we got a check from Tri-State, each company did, I believe that is the way it was.

Q. Wasn't this a device to keep from paying the Welfare Fund?

Mr. Walker: Let him finish.

Q. I am sorry to interrupt. Did you have something else you wanted to add?

A. Well, I think that Tri-State paid each individual operator for the tonnage.

Q. But he didn't pay the Welfare Fund, did he?

A. I don't know.

Q. Did you make an agreement or an assignment to Tri-State to withhold the 40 cents per ton to the Mine Workers Welfare Fund?

A. I don't think we did.

Q. So that they couldn't have withheld it, could they?

A. They paid us so much money.

Q. Isn't it true that this was a device just to keep Tennessee Products from withholding that 40 cents a ton?

A. I wouldn't know.

Q. So you wouldn't include that price when you put in your bid?

A. We didn't put in our bid.

Q. You knew from Albert Pass and the officials of
608 the District that they expected when they signed that contract to get the full 40 cents?

A. On new business.

Q. On the new business?

A. (Witness moves head up and down.)

Q. And there wasn't any pay as you can idea in your mind, was there?

A. Well, when it went to the other man it didn't make no difference with me but whether it was 40 or 60.

Q. You wanted to continue to take Matt Bunch's word or Mr. Rankin's statement or Mr. Gilbert's and just pay something less than 40 cents, didn't you?

A. Now, after the company agreed to that I think that was the reason the union wanted it done that way, that's the reason, I think it is.

Q. Make sure they would get the 40 cents?

A. Make sure they would get it.

Q. And keep you from chiseling on that contract, wasn't it?

A. I guess that's right.

Q. Sure. And they also tried to fix it up so that you would pay the wages to the men by having Products increase your price 20 cents?

A. I didn't get you, sir.

Q. And in '55 the union insisted that you pay all
609 of the wages that were due the men and the wage increase of a dollar twenty and by negotiations between you and the other operators and Tennessee Products and the union—Tennessee Products increased the amount that they paid you by 20 cents, didn't they?

A. I don't remember what it was.

Q. You don't remember that?

A. No, sir, I don't.

Q. You pass on any increase to your men?

A. I think that we did, yeah.

Q. You think you did?

A. Yes, I think so.

Q. Of course, you didn't do it because you didn't have any employees, did you?

A. I didn't have any employees, our operator was the only men we had employed.

Q. So you didn't pass that 20 cents on?

A. Well, I don't know but I think we did.

Q. Did you increase your subcontractor's price 20 cents?

A. We usually had to when we increased the operator.

Q. Now, getting back to when Mr. Gilbert or Mr. Rankin, did you say Mr. Gilbert told you to pay what you could?

A. Yeah.

610 Q. Or did he say, "Do the best you can."?

A. Well, that's right, the best I can.

Q. "Do the best you can."?

A. (Witness moves head up and down.)

Q. Could you tell me the exact conversation that you had with him?

A. Well, I never was a man to hang around with no officials or no picket lines.

Q. Well, just tell me the conversation that you had.

A. Well, I tried to have just as little to do with the representative as I could, although I like Mr. Gilebrt, I will state that, and we talked about these and he said, "Now, Dude, just do the best you can, pay what you can." Now, that's what he told me.

Q. Didn't he say—didn't you tell him first that you couldn't keep operating your mine, you didn't think you could make it if you paid this?

A. Well.

Q. If you signed this contract?

A. Chances are I did.

Q. He told you, "Now, go to work and do the best you can."?

A. He always told me that.

Q. Didn't say not to pay it?

A. He said, "Pay what you can."

611 Well, you know he didn't tell me not to pay it.

Q. Why, of course not.

A. Why certainly. He said, "Do the best you can."

Q. He thought you could go ahead and pay it if you did the best you could in operating those mines?

A. And I done that very thing.

Q. Then after you got sued for the Welfare Fund that's when you began to say that, "Oh, pay what you can," meant that, "I wasn't to pay the 40 cents." This was a defense you made after the Welfare Fund sued you, wasn't it?

A. Well, they sued us and I didn't pay any after I was sued, I don't think.

Q. You didn't pay it before then either, did you?

A. Yes.

Q. Huh?

A. Never missed a payment.

Q. You never missed a payment?

A. You got records on that.

Q. Why, isn't it so that you testified just a few minutes ago you didn't pay the full 40 cents?

A. Didn't pay the full 40 cents, no, sir.

Q. And then after 1958 you didn't pay anything?

A. Didn't pay anything, that's right.

Q. All right. And also you reported to the fund, when you reported to the fund, you reported on there only

612 two or three mines, didn't you, and the rest of them you put on there that they were not operating?

A. Some of them wasn't at times, they wouldn't be operating.

Q. A number of them you didn't even include at all?

A. Some of them was operating, some wasn't.

Q. And there were mines operating that you put on your report that they were not operating?

A. I don't think so.

Q. You don't think so?

A. I don't think so.

Q. Now, was there any work stoppages in '57 due to the fact that you didn't pay the vacation pay in these mines?

A. Not at my mines there wasn't.

Q. Not in any of your mines, you never had any work stoppage in '57?

A. I don't know whether we had any work stoppage or not, I don't recall whether we had a picket line or not.

Q. You would know that, wouldn't you?

A. Well, I had so many at times, you know. Can I have a glass of water?

The Court: Get the witness a glass of water.

The Witness: Be all right for me to take an aspirin, your Honor?

The Court: Yes, sir.

613 Q. Mr. Morrison, do you remember if you and the operators had a dispute with Tennessee Products about cutting the price of the coal around '57 or '58?

A. No, I really don't.

Q. Didn't they tell you they would have to reduce the price of coal because your competitors that worked on the land owned by Tennessee Consolidated, that they had reduced their price to their truck operators?

A. I don't recall.

Q. You don't recall that?

A. I don't.

Q. They were your competitors, weren't they?

A. Well, they sold in a different field to us. We was a few miles apart. They worked for Tennessee Consolidated and we worked for Tennessee Products.

Q. They were competing, though, with you, weren't they?

A. Well, I don't know.

Q. Weren't they selling in the same market?

A. Well, I wouldn't know.

Q. You don't know where the—

A. (Interposing) I don't know where they were selling.

they shipped their coal, most of their coal went the other way, down by Cowan.

Q. Their coal didn't go to TVA?

614 A. Well, I don't know whether it did or not.

* * * * * * * * * * *

Q. Mr. Morrison, you had some equipment or rails stolen, didn't you?

A. Yes, sir.

Q. When was that?

A. Well, a few years ago, I don't remember the date.

Q. And you reported that to the Sheriff?

A. Yes, sir.

Q. And you and the Sheriff made a search for that, didn't you?

A. Yes, we did.

Q. You had them marked?

A. Yes.

Q. And where did you find them?

A. Well, I found a load of it, I found two loads, I found one load in Sequatchie County.

Q. Sequatchie County, where is that?

A. At Earl Patten's mine.

Q. Earl Patten's mines?

A. (Witness moves head up and down.)

Q. And where did you find the other load?

A. I found the other one in Marion County at John Stephenson mine.

615 Q. John Stephenson's mine?

A. That's right.

Q. And that's the man that testified here a little while ago?

A. Yeah, I believe it was yesterday.

Q. What did you do, did you take that back?

A. Well, yes.

Q. Did he tell you where he got it?

A. Yes, he did.

Q. Where did he get it?

A. He got it from Ralph Layne.

Q. From whom?

A. Ralph Layne.

Q. Ralph Layne?

A. Yeah.

Q. And you tried to prosecute Mr. Layne, didn't you?

A. Yes, I did.

Q. Did you try to prosecute Mr. Stephenson?

A. No, John give me the iron back, told me if it was my rails, why, that I could have them.

Q. What year was that, do you know?

A. I don't recall, it must have been along about '59.

Q. And Mr. Layne was in the business of selling rails?

A. Well, evidently he was.

616 Q. Well, did he have some kind of a mine supply business?

A. Well, they claimed he did but I don't think he had any.

Q. You think he was just stealing, wasn't he?

A. No, I—but, anyhow, I found the rails and I got them back and prosecuted him and he come clear.

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618 RECROSS EXAMINATION

By Mr. Owens:

Q. Mr. Morrison, how much did Mr. Travis pay you for the interest in his mines that you turned over to the partnership?

A. He didn't pay me, John Stephenson paid me.

Q. John?

A. Oh, you mean when he paid—when I turned M and T into W. T.?

Q. Yes.

A. Is that what you are talking about?

Q. Yes.

A. When I turned W. T. into M and T?

Q. Yes.

A. Not anything.

Q. Not anything?

A. No.

Q. You just made him a gift of that?

A. Well, we wasn't making any money out of it
619 nohow and I thought he might help me bear the expense by putting it in together, now, that's about right.

Q. Did he know that?

A. Sir? No, I don't think he—his mines wasn't—I don't think he thought the mines was as bad as they were, anyhow, we didn't have much equipment there. I told him it saved clerk expense and I said, "Woody, I am just going to put all that in with M and T." I said, "Well, it will be easier run that way."

And so that I just made him a present of that, wasn't anything nohow.

Q. Never put anything in these mines, did you?

A. Sir?

Q. You never put anything in them, did you?

A. Not in them two mines, no, sir.

Q. He didn't put anything in either, did he?

A. Sir?

Q. He didn't put anything in, did he, any money?

A. Not in them mines that I gave him, no, sir.

Q. How about the partnership, what did he do for the partnership?

A. Well, I run the business, what little there was.

Q. What did Mr. Travis do?

A. Well, I don't know, he didn't —he didn't take no particular part in trying to operate the mines, if that's
620 what you mean.

Q. He didn't do anything, did he?

A. Well, he once in a while would go around a little when he could.

Q. That's because—

A. (Interposing) But he didn't give no orders.

Q. That was his job for the Tennessee Products to go around and oversee that?

A. Yes.

Q. What did he do for the partnership?

A. Well, not anything.

Q. What did you want him as a partner for then?

A. Well, he and I were good friends and—

Q. (Interposing) You thought he needed this money?

A. Well, everybody needs money.

Q. You wanted to make him a gift of it?

A. No, that's not—I had known Woody for years, I knowed him when he didn't have a dime.

Q. That's the way you got the leases, wasn't it, was to pay Woody something?

A. No, sir, I didn't pay Woody nothing for the leases, not one dime.

Q. Did you ever hear that Mr. Travis got fired?

A. Well, I don't know whether he got fired or not but he was asked to resign, I guess.

621 A. That was right after '59, after they took your deposition, wasn't it, and they found out then that you had been giving money, you and the other operators, to Woody Travis?

A. I did not give—

Q. (Interposing) And the Tennessee Products, as a matter of fact, all their officials were cleaned up, weren't they, by the Merritt-Chapman and Scott?

A. No, I don't know about that now.

Q. How about Mr. McFarlin, Jr.?

A. Mr. McFarlin, Jr. knew everything we did was aboveboard, there wasn't nothing hid.

Q. He knew it, didn't he?

A. He knew it and Mr. Mac.

Q. He got fired because of the—

A. (Interposing) Well, but his daddy, his daddy knew it, that we were in partners that away.

Q. He got fired, too, didn't he?

A. No—well, he retired.

Q. He was asked?

A. We called him Mr. Mac, the old man, the old man McFarlin, and the other one Carl Junior.

Q. Did you pay them anything?

A. No, sir, not one penny.

* * * * * * * * * *

622 HOWARD HIGGINS,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Please state your name, sir.

A. Howard Higgins.

* * * * * * * * * *

624 Q. Where did you go from that job?

A. In '46 we bought, me and my father bought out what they call the Green Mines in the Pocket on the Tennessee Consolidated Coal Company property.

Q. How long did you work that mine?

A. Until some time in '48.

Q. In 1948 where did you go?

A. Well, everything closed down over there and we bought another place in Mt. Olive by the name of the Jack Brown Mine.

Q. And how long did you work at Mt. Olive?

A. Until '51, we were working it in '51 when my father died.

Q. Then where did you go?

A. Went to the Pocket, Floyd Hollow.

Q. And have you been in Floyd Hollow ever since?

A. Up until December the 26th of '62.

Q. What type of mining operation did you have, Mr. Higgins?

A. It's a hand-loading.

Q. You operate a union or non-union mine?

A. Well, I really don't know what you would call it, it was union men working in it.

625 Q. Did you ever sign any National Bituminous Coal Wage Agreement?

A. Yes, sir, I signed them all along.

Q. I hand you a piece of paper here entitled "National Bituminous Coal Wage Agreement of 1950", and ask you if you can identify that?

A. Yes, sir, I do.

Mr. Combs: May I see that?

Q. Did you sign this particular agreement there, Mr. Higgins?

A. Yes, that's my handwriting.

Q. Will you make that an exhibit to your testimony?

A. I will.

The Court: Ninety-nine.

(The agreement referred to above was marked P-99 and received in evidence.)

Q. Do you recall any of the events surrounding the signing of this particular wage agreement?

A. I think that agreement there was signed when I went to the Pocket, that agreement was signed some time in '50, in October, somewhere along there when they had the big picket line on the Mt. Olive Road.

Q. Did any representative of District 19 come to your mine?

A. The best I remember about the only one that

626 come to my mines was Mr. Hugh Rankin.

Q. Did you have any conversation with him at that time?

A. Yeah, he said we had to get the men in the union and pay up our dues and welfare.

Q. Who is Mr. Rankin?

A. He was a representative of District 19 at that time.

* * * * * * * * * *

627 Q. Did you sign the National Bituminous Wage Agreement of 1952?

A. Yes, sir.

* * * * * * * * * *

629 Q. Did Mr. Bunch have any or make any statement regarding the 1952 amendment?

A. Yes, he said we had to make settlements and everybody that didn't have their payment made for the month behind couldn't sign the contract.

Q. Did you ask him anything about the varying of the wording of the contract as related to the small truck operators?

A. Not at that time, when I started to sign it.

Mr. Combs: So I can follow this, your Honor, if I may, he talked about a month behind on what?

Q. What payments did you refer to, Mr. Higgins, that you had to pay up a month behind?

A. He said we had to pay up, all that didn't have the back payment made on this welfare for the month behind didn't sign the contract until they did make the payment.

Q. Did you have any discussion or did he make any talks regarding this contract during the meeting inside the Palmer office?

A. Well, in there before the committeemen and everything, he said, "This is the contract."

Q. Did you speak to him afterwards?

630 A. When I—after he got through settling with Fred Canon and them made payments to him, some of them, Mr. Roberts wrote a personal check and they made their payment and I followed him out and signed the contract out between the depot and the commissary.

Q. And did you have a conversation with him out there?

A. Yes. I asked him what that meant when he said, "This is the contract."

He said, "Don't worry about it. That is to keep the big operators off of you."

* * * * * * * * * *

Q. Did you sign the National Bituminous Wage Agre ment Amendment of 1955?

A. Yes, sir.

Q. I am handing you now a paper entitled "Nation Bituminous Wage Agreement of 1950 as amended, effecti September 1, 1955," and ask you if you can identify that?

A. Yes, sir.

Q. Did you sign that agreement?

A. Yes, sir.

631 Q. Will you make that an exhibit to your test mony, Mr. Higgins?

A. Yes, sir.

The Court: Exhibit No. 100.

(The exhibit referred to above was marked P-100 an received in evidence.)

Q. Do you recall where this agreement was signed?

A. The '55 agreement was signed at the commissary i Whitwell.

Q. Prior to the time of the signing of the contract, wer there any unusual occurrences in the mines where you wer working at this time in the year 1955 prior to the signin or prior to the talking of this agreement?

A. Clarence, we had a bunch of trouble at this time, don't remember whether it was over contracts or what off hand.

Q. Do you recall when that started?

A. I believe it was June of '55.

Q. Do you recall where you signed this agreement?

A. The '55 agreement?

Q. The '55 agreement.

A. It was signed at the commissary at Whitwell.

Q. And where, in what town?

A. Whitwell.

Q. Do you recall any unusual requirements that

632 were required of the operators before you were able to sign this agreement?

A. We had to sign an authorization slip of the company to withhold the welfare on new business.

Q. Did you request to sign the contract when it first came out?

A. In '55?

Q. In '55.

A. If there was a contract signed in '55 before October, I didn't sign it, I don't remember.

Q. In '55 did you sign this National Bituminous Wage Agreement without executing an authorization?

A. Well, that was the first thing that was handed to me when I went to the commissary, was the authorization slip.

Q. Who was present at the commissary when you signed this agreement?

A. Mr. George Gilbert, Albert Pass, I believe Mr. Ridings and I don't remember whether there was any of the rest of the representatives there or not.

Q. Did you have any discussion with any District 19 or International Union representative at this time?

A. I met Mr. Gilbert in the yard, the yard was full of both Whitwell and Palmer operators.

I asked Mr. Gilmert what this was going to do us.

633 He said, "Don't worry about the authorization slip, it is going to take care of it." And he said, "The next time you bid try to bid enough to pay the 40 cents or have your company bid enough to pay the 40 cents."

Q. Who was handling the bidding for TVA contracts for your mine?

A. Tennessee Consolidated Coal Company.

Q. At this time were you personally trying to enter any bids for TVA contracts?

A. No, sir, not in '55.

Q. I hand you a piece of paper, it's styled "National Bituminous Coal Wage Agreement of 1950 as amended effective October 1, 1956," and ask you if you can identify that?

A. Yeah, I signed that contract.

Q. Is your signature on the contract?

A. Yes, sir, it is.

Q. Will you make that an exhibit to your testimony

A. I will.

The Court: One hundred and one.

(The agreement referred to above was marked P and received in evidence.)

Q. Do you recall where you signed this contract?

A. I signed that contract at the local hall in

634 Pocket.

Q. Do you recall any of the District or Inter tional Union representatives that were present at that ti

A. There was some of them, Clarence, some of them th but I don't remember which ones, I think Mr. Gilbert there and it strikes me that Mr. Ridings or Mr. Pass was there.

Q. Did you have any discussions at this time about agreement?

A. No, the first thing they give us was the authorizat slip before they would allow us to sign the contract aga

Q. Did you sign the National Bituminous Wage Agr ment as amended for the year 1958?

A. I did.

Q. Do you recall where you signed that agreement?

A. Offhand I don't remember where I signed that agr ment, probably at the office at Palmer.

Q. Going back to the year 1955, what were the busine conditions as related to your mine?

A. I don't understand.

Q. Did you have work or were you out of work?

A. Part of '55, '56 and up until January of '57 the wo was very good.

Q. Do you know what kind of a contract or wheth

635 or not you were working on a TVA contract at th time?

A. I believe, I believe we was working on an 18-mont contract at that time.

Q. And who had obtained that contract?

A. Tennessee Consolidated Coal Company.

Q. Now, you mentioned January of 1957. What occurred in January of 1957?

A. In January of '57 Mr. Roberts told all the small operators if we could get the men to work he could get us a 3-year contract and we met the committee and Mr. Gilbert had them all go to Palmer and try to work out agreements so we could get the 3-year contract and they refused to go along, which put us out of work for eight months.

Q. Prior to this time what kind of arrangement did you make in regard to the wages that were paid to the men?

A. You mean how I worked out what I paid them?

Q. Right. How were the wages worked out, did you pay the union scale as required by the contract?

A. No, sir, I did not.

Q. How were those wages worked out?

A. They was worked out by the operators committee and the local committeemen.

Q. Was there ever any member of the District 19 present at any of these negotiations or discussions?

636 A. Mr. Gilbert was always present when they was worked out.

Q. Did you ever pay the full 40 cents per ton welfare as required by the National Bituminous Wage Agreement?

A. I don't think so.

Q. What did you pay on that?

A. The practice that I made at them times was try to have a living and send the rest of it to the welfare.

* * * * * * * * * *

637 Q. Were you ever a member of any coal operators association?

A. Yeah.

Q. What were the names of those associations?

638 A. Sewanee Coal Operators Association.

* * * * * * * * * *

Q. Now, after August of 1958 did you submit any contracts in your own name or in a collected group for a TVA contract?

639 A. We did.

Q. What was the name of the group?

A. Floyd Hollow and Bee Branch.

Q. Which group were you?

A. Floyd Hollow.

Q. And what was that Floyd Hollow group formed for? What was the reason for it?

A. Well, during the vacancy in work there the company had bid on contracts and was turned down and Mr. Roberts or some of them advised us to incorporate and another thing was they wouldn't have small tonnage from no mines, they had to come from one source, so much tonnage from one source, and he advised us to incorporate and bid on the contract so we could get some contracts.

Q. Had you worked on any truck mine contracts since the one expired in 1957 that Consolidated had obtained?

A. I don't understand the question.

Q. From the time the prior truck contract that Conosolidated had expired in '57, had there been any other truck contracts obtained by Tennessee Consolidated with TVA?

A. Not as I know of.

Q. Do you know how the bid was prepared and submitted on the Floyd Hollow bid?

A. Mr. Ewing Hampton was chairman of the corporation for Floyd Hollow, R. B. Ivey was one of the offi-

640 cers and they done most of that work, I don't know how they done it.

Q. You don't know then what went into the preparation of this bid?

A. I don't.

Q. Do you recall any discussions or meetings you might have had with any local union or District 19 officials in regard to wages in regard to that bid?

A. Yes, it was always before we bid or tried to get a

ontract, always the price was worked out what we should
ay.

Mr. Rayson: We object to that.

Q. Who was present?

Mr. Rayson: Object to "they."

Mr. Walker: I will clear that up.

Q. Who was present in this group, was there a meeting held prior to the submission of this bid, did you all have a meeting with anyone before you put this bid in?

A. We had a meeting with Mr. Gilbert and the Pocket local committees before we even put in a bid.

Q. Who all was present at this meeting?

A. All the small mine operators was there and Mr. Gilbert and the Pocket local president and committeemen.

Q. Did you all come an agreement as to wages regarding this bid?

A. We did.

641 Q. And with whom was the agreement finally worked out?

A. It was worked out with the local committeemen at the time, Clarence, when we quit, or when we quit in '57 we was paying the minimum wage for shift work, sixteen, one and a half, the best I remember, a dollar thirty-one per car and $15, $15 a month vacation. When we went back there in '58 they took a cut down to a dollar twelve and the minimum wage for the shift men to get business, that's what we worked out in our meeting.

Q. Did you all submit your bid for a TVA contract?

A. That's the Floyd Hollow?

Q. Yes, sir.

A. Yes, sir.

Q. Was that bid successful or unsuccessful?

A. They awarded the bid.

Q. Do you recall when you received the award or—

A. (Interposing) Some time in October or November.

Q. Were you sued by the United Mine Workers Welfare Fund?

A. Immediately after the bid was awarded.

* * * * * * * * * *

655 Q. Mr. Higgins, at the time we recessed you were speaking of your bid for a TVA contract and you had identified it. Will you make this an exhibit to your testimony?

A. I will.

The Court: One hundred and four.

Q. Did you prepare this invitation yourself, Mr.
656 Higgins?

A. Some of it, I did the price personally, I did mark on it.

* * * * * * * * * *

Q. Four dollars and seventy-eight cents. And preparing the bid do you recall what amount of welfar that you included in the preparation of that bid?

A. On this bid we tried to figure the full 40 cents.

* * * * * * * * * *

679 Mr. Kramer: We object to "they burned his house", there has been no indication as to who "they" are.

The Court: I will sustain the objection to the extent of the statement that "they burned it", there is nothing to show who "they" are.

* * * * * * * * * *

684 Mr. Combs: I follow the Court's analysis of that
685 but I want to make myself clear, if I possibly can. The fact that they are trying an antitrust case does not change the necessity of proving by legal evidence, competent evidence, that there is a conspiracy. A conspiracy has to be proven in order to make all of this other stuff, the overt acts, connected in with this. I think that we have the fact that we have used the case of Judge Medina back in New York, I think he used the very words in describing that when he said, "After all, you do have to prove a conspiracy. You can't look into a crystal ball and you can't

look into all of these other acts. You have got to prove a conspiracy on the part of the people before they could be convicted under the Antitrust Act." And counsel has often remarked in his arguments and in his brief that you can have all of the acts and be legal and yet the combination of all of those can result into an inference of an antitrust act violence. We don't agree with that.

We think there has to be a conspiracy shown and that these acts were the acts that were to carry out the conspiracy. I think we differ from that standpoint.

* * * * * * * * * *

688 Q. Mr. Higgins, do you recall when you incorporated your business into a corporation?

A. October, 1950. Do you mean in—

Q. (Interposing) When you formed the corporation with your business.

A. Of Floyd Hollow?

Q. Of Floyd Hollow No. 4.

A. October, '58.

Q. October, '58. Was there anyone else interested in that corporation at that time with you?

A. There was nobody but me and my family in the corporation.

Q. At any time did you have anyone else interested in the corporation or coming in and sharing in the corporation?

A. I did have silent partners, advisers, or whatever you may want to call them.

Q. Who were they?

689 A. Fred Morrison, I sold a half interest in the mines in '57 or '58 to Fred Morrison and Everett Roberts.

Q. What was the amount of money you received from Mr. Roberts and Mr. Morrison for the half interest?

A. Four thousand dollars.

Q. Did you subsequently repurchase that interest?

A. In '61 Mr. Callis ruled all the company officials out

of any operation of the small mines and I repurchased the mines.

Q. Now, any profit that these men would have received, are they reflected in your books?

A. They are, it's in the books.

* * * * * * * * * *

701 Q. Were all of the employees at your mine union men?

A. Yes, sir.

* * * * * * * * * *

703 Q. Were you operating under any lease at Floyd Hollow No. 4?

A. Under verbal agreement.

* * * * * * * * * *

704 CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Higgins, as I understand it, you were a coal mine operator for some years before you first started working with Tennessee Consolidated?

A. Yes, sir.

Q. You started with Tennessee Consolidated when?

A. The first work I done for Tennessee Consolidated was in 1946.

Q. Is that when you opened the Holly Branch mine
705 or Floyd Hollow mine, rather?

A. No, sir.

Q. When did you open that mine?

A. We bought that Floyd Hollow mine, me and my father was partners, as a partnership in 1951.

Q. Did you and your father operate that as partners for some time after that?

A. We operated it in the first of August, he died about the middle of August, I started the mine in September myself.

Q. Then you operated that mine individually up to the time you formed the corporation in 1958?

A. I did.

Q. Who was the man in charge of Tennessee Consolidated Coal Company at that time?

A. Mr. Everett Roberts was superintendent.

Q. Was he the top official of the company at Palmer?

A. At Palmer, yes.

Q. And did the company have its offices then at Palmer and Tracy City?

A. My understanding was they had one at Palmer, Tracy City, and Nashville. I never was in the Nashville office, I don't know.

Q. Well, was Mr. Roberts in charge of everything in the valley?

706 A. As far as I know.

Q. Is he the man that you dealt with in obtaining your lease or in working your lease in 1951?

A. Well, at times the Nashville officers was there when we was talking about it, but most of the time he was.

Q. What Nashville officers are you talking about?

A. At this time I believe Mr. Hampton.

Q. Stanlee Hampton.

A. He was in several of the meetings.

Q. Did he come around and look at your mine from time to time?

A. Mr. Hampton?

Q. Yes.

A. No, sir.

Q. He didn't come around to look at it?

A. No.

Q. Did Mr. Roberts?

A. Not very often.

Q. Who was this Fred Morrison you are talking about, what did he do back then?

A. Assistant superintendent of the Coal Valley mines.

Q. Does that mean he was Mr. Roberts' chief assistant?

A. That's the way I understood it, yes, sir.

707 Q. Now, when did Mr. Roberts and Mr. Morrison

become interested in your business from a financial standpoint?

A. Sometime — I sold out to him sometime in the last part of '47 or the first part of '48, I don't remember the exact date.

Q. You mean that they were always silent partners in your business?

A. No, sir, from '51 up to '47, the last part of '47, the first part of '48.

Mr. Rowntree: He is saying '47 and '48.

By Mr. Rayson:

Q. You mean '58, Mr. Higgins, not '48?

A. Yes, sir, '58.

Q. In other words, you didn't give them any money or any part of the profits of the business up until '57 or '58?

A. I believe the first payment started sometime in '5s when we started.

Q. Is that when they one-half of your company for $4,000?

A. Yes, sir.

Q. I believe I understood you yesterday to say that you were seeking their advice, is that right?

A. I don't know what part they played, offhand
708 that's kind of the understanding, the reason I sold that mines to them in '48, when they went on a strike in June of '47 had spent all of the money I had and everything I had made in 19 - -all them years trying to equip and put equipment in them mines, and I was up against it, I had four kids in high school, I had to do something.

Q. Are you referring again to '56 or '57?

A. Yes, sir.

Q. Well, did you seek them out, did they seek you out?

A. Well, when he was — all the time he was doing that work, why, Mr. Jim Oliver was truck mine supervisor. At that time they furnished a little stuff, you could ask him for supplies or something, he told me several times I wasn't on the right side of the fence.

Q. You weren't on the right side of the fence?

A. That's right.

Q. Did you suspect some hidden meaning in what Mr. Oliver was telling you?

A. Mr. Oliver?

Q. Yes.

A. Yes, sir, I knowed what he meant.

Q. You knew that you were meant to give somebody something in order to do a little better around your mine, is that it?

709 A. At that time, why, Mr. Roberts and Mr. Morrison was in on several more.

Q. Who else were they in on?

A. They was in on Jim Patton's, Harley Bryant, Charley Martin's.

Q. Anybody else?

A. Well, probably was, I don't know, but I know them.

Q. I have been looking at your income tax returns and I don't see any reference to any payments that you made to those men.

A. If you will look.

Q. Any reason for that or did it just happen that way?

A. If you will look on the quarterly reports, you will see.

Q. What about the income tax returns, was there some reason that you didn't show them as having received some money from the company?

A. It showed what money they received as an employee every quarter, and it did come out on the income.

Q. Well, did you give them half of what you received?

A. No, sir, I took my salary and give them half of the profit.

Q. Half of what was left over after your salary?

710 A. Yes, sir.

Q. Did you still have your quarterly tax return?

A. They are supposed to be in the file somewhere.

Q. How much were you giving these men at that time?

A. Whatever half of the profits was.

Q. How much did you estimate that you gave them ov the several years that they were in business with you?

A. Well, I wouldn't know exactly what the figures wa

Q. Well, was it $10,000?

A. I imagine.

Q. You think it was $10,000?

A. Well, I don't know.

Q. Does that sound about right to you, Mr. Higgins? realize —

A. (Interposing) Something like that.

Q. All right. And you think that several other of th operators on your property were dealing similarly wit the officials of the company?

A. They was.

Q. Now, you have also put in evidence here somethin that is called the A. L. Henderson Coal Lease. Where i that?

Clerk Robert Dale: Right here.

Q. This instrument, Mr. Higgins, is not dated. Do yo have any recollection of when it was signed?

711 A. I signed different ones, I don't recollect whe that one was signed.

Q. Well, when you were operating your mine in Floy Hollow, when you were operating in Floyd Hollow, did yo always have one of these?

A. Yes, sir.

Q. Did you sell your coal to the A. L. Henderson Coa Lease or did they buy your coal?

A. A. L. Henderson held a lease on the property for a right smart while there, the coal went to Whitwell Coal Corporation, that was the return truck tickets, I don't know where it went then.

Q. Who gave you the money for the coal, Mr. Higgins, did you get a check for your coal?

A. I believe my check was from Tennessee Consolidated Coal Company.

Q. And the amount of this check depended upon the number of tons you delivered to some tipple?

A. Any point they said ship it to, yes, sir.

Q. And then they would give you a check in return?

A. That's right.

Q. But you don't know who bought the coal, actually, do you?

A. No, sir.

Q. Did you pay a royalty to the A. L. Henderson
712 Coal Lease?

A. If there's any royalty paid to A. L. Henderson Coal Lease, the company held it.

Q. You paid nothing to A. L. Henderson Coal Lease?

A. I had my price.

Q. For the coal?

A. My price is set out with royalty paid, I don't know what they done on that.

Q. So somebody, is this your understanding, that somebody removed whatever royalty you owed from the amount of money you were getting for your coal and paid it over to the A. L. Henderson Coal Lease?

A. They removed the money, I don't know where it went.

Q. Now, when was this A. L. Henderson Coal Lease cancelled? It wasn't cancelled in 1962, was it?

A. The best of my recollection sometime in '61.

Q. Sometime in '61. How was your lease cancelled, by some written letter, or did Mr. Callis or Mr. Roberts just come around and tell you your lease was cancelled?

A. I believe I got a notice on it.

Q. And at the same time were you told that you would continue to operate under a verbal lease from the company?

A. Yes, sir, about that time Allen and Garcia came
713 to Palmer and Mr. Callis said that all company officials had to come out of the mines and get disconnected with any truck mines.

Q. And at the same time did he disconnect you from A. L. Henderson Coal Lease?

A. He didn't.

Q. Who did?

A. The president.

Q. Stanlee Hampton?

A. No, at that time it was Mr. Callis.

Q. Mr. Callis then.

The Court: Somehow or other I have been unable to understand exactly the reference to A. L. Henderson Coal Lease. I realize that was Exhibit No. 108, but can you explain that to me and where does the A. L. Henderson come into it?

Mr. Rayson: All right, sir. I think we can, or at least I will explain my understanding of it.

The A. L. Henderson Coal Lease was a partnership which was in existence for a number of years up to about 1961. It was a partnership known as the A. L. Henderson Coal Lease, which leased mine areas to operators, such as Mr. Higgins.

This was a partnership composed of the, I'd say by and large the relatives, the female relatives of the prin-
714 cipal male owners of this company. The A. L. Henderson Coal Lease obtained their land from the Tennessee Consolidated Coal Company and then they in turn leased to Mr. Higgins and others and received a royalty for those services, and it is my understanding from Mr. Higgins' testimony that this was cancelled, this arrangement was cancelled by the company in 1961 and from that point on the company leased on an oral basis directly to these operators.

By Mr. Rayson:

Q. Had you told Mr. Callis prior to 1961 that Mr. Roberts was your partner or was an investor in your business?

A. That was supposed to be a secret as far as me and Mr. Morrison and Mr. Roberts was concerned. In a board meeting, probably in Chattanooga or Nashville one, he got it out of Mr. Everett Roberts, Jr., hisself, I never did tell him.

Q. Who was Mr. Everett Roberts, Jr.?

A. That was Everett Roberts' son.

Q. Did he have a part of your business, too, Mr. Higgins?

A. Mr. Roberts, I sold that mine to Fred Morrison or made the contract with Fred Morrison. Whenever the trade was closed, Mr. Roberts come with him and they each give me a check for $2,000 apiece, but when these payments was made, the first one was made to Mr. Roberts and from
715 then on it was made to Fred Wideman, Jr., Everett Roberts, Jr., and Fred Morrison.

Q. In any event, these were secret, insofar as the other officials of the company were concerned?

A. That's my understanding.

Q. Certainly as far as you were concerned they were?

A. Yes, sir.

Q. Now, did you buy back your interest in this mine?

A. Yes, sir, when Mr. Callis asked them to go out I did.

Q. What amount did you pay for this interest?

A. I paid $2,000 of it, was supposed to work out the other.

Q. You actually acquired it for $2,000 plus an agreement to pay another $2,000, is that it?

A. As I worked it out.

Q. Mr. Higgins, did you continue to pay or did you pay a royalty to Tennessee Consolidated Coal Company after the A. L. Henderson lease was cancelled?

A. I don't remember offhand whether the statements came out with royalty held or not.

Q. Did you continue to sell all of your coal to Tennessee Consolidated under your oral lease?

A. I sold some coal at this time over at Signal Mountain Cement Plant.

716 Q. Did you get the permission of the company to do that?

A. Yes, sir.

Q. Did you pay the company a lease for that coal?

A. The check went back to the company, they paid me once a week, they held their insurance.

Q. You mean the cement company paid the Tennessee Consolidated for the coal you sold?

A. I never understood your question.

Q. Did the cement company to whom you sold this coal pay Tennessee Consolidated the check for that coal?

A. They did.

Q. They didn't pay you directly?

A. No, sir.

Q. Was that the basis upon which Tennessee Consolidated gave you permission to sell coal to the cement company?

A. They gave Mr. Varnell permission to buy my coal and they paid me for all coal that was hauled to the cement plant, outside of that I don't know what the deals was.

Q. I see. It was Lon Varnell?

A. Yes, sir.

Q. All right, sir. What wage were you paying in your mines from the time you opened your mines in 1961 up until the time you closed?

717 A. I was paying the Walsh-Healey minimum wage.

Q. Prior to that you have testified that you closed your mine in March of 1960. What wage were you paying your men at that time?

A. The same wage, minimum wage.

Q. How long had you been paying that wage?

A. Ever since the Walsh-Healey went to controlling wages.

Q. What had you paid prior to that?

A. Anything we could work out, when we thought we was going to get a contract anything we could agree on.

Q. Well, was it less than that, was it less than you paid under the Walsh-Healey?

A. I really don't know, wages for a hand loader went down all of the time, instead the shift man went up, but most of the hand loaders or coal loaders would go down.

Q. Did the Walsh-Healey require you to raise your wages when the Walsh-Healey became effective, did that

require you to increase your wages that you were paying your employees?

A. I don't think there was very much increase on mine.

Q. Wasn't much of an increase on yours?

A. No, sir.

Q. You testified yesterday that you paid your
718 employees or some of your employees $1.31 a car at one point. Do you remember when that was?

A. Yes, sir.

Q. When was it?

A. '56 through '57, what work we done in '57.

Q. '56 through '57. And I was unable to hear the balance of your answer.

A. That is what work we done in '57, up until March of '57.

Q. All right. Is that when you sought to get a reduced wage agreement?

A. No, sir, we did not ask for a reduced wage. The superintendent of the Palmer Company, which is Mr. Roberts at that time, told us if we could get the men to work for the same wages he would get us a 3-year contract.

Q. You mean if they would work for $1.31 for three years?

A. At this time we was paying $1.315 a car for 1,600-pound unit, we was paying the minimum wage for the shift men, we was paying $15 flat vacation a month, and they blowed out and quit and wouldn't have it.

Q. Did you attempt to negotiate something with the local union committee about this?

A. Yes, we had a number of meetings with them in the office at that time, Palmer office.

719 Q. Were they not willing to accept that?

A. No, sir, they didn't accept it.

Q. And is that the only thing you had to offer?

A. Yes, sir.

Q. Were you present at these negotiations?

A. I was.

Q. Were you a member of the committee?

A. I probably was, I don't remember on that.

Q. Do you remember who else was a member of the committee?

A. Well, we served off and on at different times, I don't remember on that particular time who was the committee. I believe me, George Bryant, R. B. Ivey, and Ewing Hampton.

Q. And Ewing Hampton?

A. Yes, sir.

Q. And you attempted to negotiate with some other group, is that right, your employees?

A. We tried to negotiate with Mr. Gilbert and the Pocket committee.

Q. And you say that you were unsuccessful then?

A. We was.

Q. What were you offering them?

A. The same price.

Q. A dollar thirty-one cents and a half?

720 A. A dollar thirty-one and a half and the minimum wage.

Q. And this was not acceptable?

A. It was turned down.

Q. I believe you stated yesterday that this resulted in your being closed for a period of time?

A. The best I remember eight months.

Q. Then didn't you have a work stoppage of some kind over a Christmas bonus, Mr. Higgins?

A. Yes, sir.

Q. Had you paid a Christmas bonus?

A. No, sir, I made a settlement to pay Christmas bonus in three payments.

Q. You remember the amount that you were supposed to pay?

A. Forty dollars.

Q. And you had not paid it, you say?

A. No, sir, we signed the contract, the best I remember that time, for a hundred dollars a year vacation and during

the duration of that contract, just before Christmas, Mr. Lewis or the union or somebody set this $40 as what they call firecracker money, when it come time we wasn't prepared to pay it and it caused a shutdown.

Q. In other words, in any event, you didn't pay whatever the contract specified for the Christmas payment for

721 that year?

A. I paid two payments on it.

Q. Well, you didn't pay it at the time it became due, did you?

A. No, sir.

Q. And did your men cease to work then?

A. They did.

Q. Did you make an arrangement to pay it after that?

A. We made an arrangement to pay it in three payments.

Q. Did you ever pay it?

A. I paid two payments of it.

Q. Now, this was just before you were attempting to work out some wage agreement in 1957, which you say Mr. Roberts said would result in your getting a contract?

A. Probably was.

Q. Now, you say your men went back to work sometime in 1958 for $1.12 a car?

A. I believe they went to work sometime in '58, yes, sir.

Q. Is that when the Floyd Hollow group got the contract with the TVA?

A. No, sir, when we went to work in '58 the men had drawed their compensation out, unemployment com-

722 pensation. The president of the Pocket local at that time came to my house one morning and said they had to be something done and wanted to know if it could be any business got. Well, I told him we'd have to go see Mr. Roberts.

Q. Mr. Higgins, when did you get this Floyd Hollow contract?

A. Sometime in October of '58.

Q. Who negotiated that contract for you or submitted that bid for you?

A. The officers of the Floyd Hollow Coal Company, I mean Floyd Hollow, Incorporated, as far as I know did.

Q. Did the officers of Tennessee Consolidated have anything to do with that?

A. I don't remember what they had to do with it.

Q. Did the Floyd Hollow Company have any sales representatives acting for them?

A. Tennessee Consolidated Coal Company was sales agent, as far as I know.

Q. Do you know what they were getting out of this contract?

A. No, sir, I don't.

Q. Do you know on what basis the TVA bid was submitted, how was it computed, do you know?

A. I wouldn't know that for I don't think I was in
723 on it.

Q. You don't know what wage the bid was submitted on?

A. Do you mean for labor?

Q. Yes, sir.

A. On the minimum wage, the hauling was.

Q. Or on the welfare?

A. That I can't answer, I don't know.

Q. Had you been visited during the summer of that year by two men who claimed to represent the Welfare Fund, Mr. Higgins?

A. I had.

Q. Did they come to your house?

A. Yes, they came to the house.

Q. Did you invite them into your house?

A. I invited them in.

Q. Asked them to sit down?

A. No, I don't know what they came for, I think I asked them to sit down at that time and at that time me and Mr. Gilbert was special friends and he brought up the subject

of what they came for. I told him if he wanted to know anything about my business to go see my attorney.

Q. As a matter of fact, you took out a pistol and put it on the table and asked them to state their business, did you not?

A. No, sir, I did not.

724 Q. Did they tell you that they had reason to believe you were delinquent in the payment of the royalty?

A. Well, they had wrote me several letters at that time about it, yes, and I think he told me that.

Q. Did they tell you that you were about to be sued?

A. Yes.

Q. So it didn't come as any surprise to you right after this bid, as you say, when you were sued, did it?

A. No, sir, it didn't.

Q. Because you knew long before you ever submitted that bid that you were going to be sued, didn't you?

A. I believe we had had notices on it, I don't recollect.

Q. Yes. And you deny here that you placed a gun on the table in that house, in your house, and stated to those men or told those men to state their business?

A. I did not tell them to state their business and if there was a gun laying on the table it was laying there before they came, I never laid it there for that purpose.

Q. Your contract at Floyd Hollow expired on March 15th, 1960, right?

A. What was that question?

Q. I say, your contract with the TVA on your working at Floyd Hollow expired in March, March 15th, 1960?

725 A. Yes, sir.

Q. And when did you next have any business to work on?

The Court: What year, 1960?

Mr. Rayson: 1960, Your Honor.

A. The next business we had was in '61, some part of '61.

Testimony of Howard Higgins—Cross

Q. So the next time you had any occasion to go to work was in August of 1961?

A. Somewhere about that time.

Q. And so if there was any picket line in the Grays Creek area that had nothing to do with your not working because you didn't have any business to work on in the meantime, did you?

A. Yes, it had something to do with us working, we couldn't get any business, the men wouldn't agree to work as long as there was a picket line sitting on Dogwood Flat.

Q. Now, there wasn't any picket line from March until August, was there, Mr. Higgins, 1960?

A. No, sir.

Q. No, sir.

A. No, sir, there wasn't any picket line at this time.

Q. You weren't working during that period, were you?

A. Yes, sir.

726 Q. And your men were there and were willing to work and you had something to do for them, one day?

A. Well, they worked.

Q. What?

A. They did work.

Q. And this picket line you were talking about started in August, didn't it?

A. Somewhere about the middle of August, yes.

Q. That's what you referred to yesterday as the Paul Gibbs picket line, right?

A. That's right.

Q. And that picket line was at Grays Creek, wasn't it?

A. It was first set up at Grays Creek.

Q. And you are saying that that picket line lasted until the next May, aren't you?

A. It lasted until we went to work and they moved the picket line when we made agreements and got everything settled to go to work in August of '61.

Q. Well, don't you know, Mr. Higgins, that the company itself started to work in May of 1961?

A. Well, whenever it was, I don't know when the settlement was made.

Q. When Allen and Garcia started in May of '61?

A. Well, that was about the time the picket line
727 was moved then.

Q. It wasn't when you went back to work, it was when Allen and Garcia came that it was removed, wasn't it?

A. That's right.

Q. And so there wasn't any picket line from May of 1961 until August of 1961 that could have possibly kept you from going to work, could it?

A. No, sir, Mr. Fitzgerald said he didn't want to have anything to do with the dog holes, is one thing that kept us from going to work at that time.

Q. Mr. Fitzgerald didn't want to do anything with the dog holes, is that what he said?

A. Do you want me to tell what Mr. Fitzgerald said? I better not.

Q. I am asking you what you said a moment ago. Did Mr. Fitzgerald say he did not want to have anything to do with the dog holes?

A. I have heard him say it, yes.

Q. Who was Mr. Fitzgerald?

A. That was the supervisor of Allen and Garcia Company.

Q. Was he running the Tennessee Consolidated mine then?

A. He was running the Coal Valley mines is what he was running.

728 Q. So there wasn't any picket line during the summer of 1961 that kept you from going to work, was there, 1961?

A. I don't remember the exact dates that Allen and Garcia come there.

Q. All right. Let's go back to the time that there was a picket line that you were talking about from August of

1961, from August of 1960 until May of 1961. Were any of the truck mine operators on the Tennessee Consolidated lands working then?

A. I don't think so.

Q. None of them had been working for several months then, had they?

A. Not from March of '60.

Q. Were any mines in which the Tennessee Consolidated people were interested working then?

A. The Coal Valley was working part of the time, I don't remember what period that was.

Q. What about the Whitwell Coal Company?

A. They was working, as far as I know.

Q. That is run by the same people that run the Tennessee Consolidated, isn't it, the Whitwell Mining Company?

A. Whitwell Coal Corporation?

Q. Or Whitwell Coal Corporation, whatever the name of it is.

729 A. They was stripping and augering at that time.

Q. Isn't that Mr. Callis' company, too?

A. That I wouldn't know, I don't know.

Q. You don't know who runs that?

A. No, sir.

Q. Well, it was working during the time you say there was a picket line there, wasn't it?

A. Yes.

Q. And weren't all of the Pocket mines that had business working during that entire period that there was a picket line, you know that to be true, don't you?

A. I don't know the answer on that.

Q. Well, you know —

A. (Interposing) I don't know whether he was out on account of business or if he was out on account of the picket line, I can't answer the question.

Q. And you are not telling this Court that you weren't working because of that picket line?

A. Part of the time we couldn't get the men to go over to the picket line.

Q. Did you ever ask the men to go to work in 1960 or 1961 when you didn't have any business?

A. I did ask some of the men if they would go to work if we could get business.

Q. Did Mr. Roberts have anything to do with that
730 picket line out there?

A. As far as I know, Mr. Roberts didn't have anything to do with the picket line, no.

Q. Did Mr. Roberts discuss with you the opening of some mines in Grays Creek under the Southern Labor Union? Didn't you have a conversation with Mr. Roberts about that at one time?

A. On August, about August the 13th, I went to Palmer payday and we did have a discussion or talk about Grays Creek going to work.

Q. Didn't Mr. Roberts tell you that that would ruin him and ruin you and all of you, didn't he tell you that?

A. I don't remember what the conversation was, that has been a long time ago.

Q. Didn't he say something to that effect?

A. He might have.

Q. Well, isn't that your best recollection right now, Mr. Higgins?

A. That morning as I went to Palmer I seen some boys on the side of the road, first cousins of mine, and some more people told me that they was trying to organize the Southern Union in Grays Creek, and I went out there and told Mr. Roberts what I heard about it.

He said, "Forget it. Don't think nothing more about it."

And I fooled around there and got my check
731 and when we—when I started out, he waved me down and told me the setup, who was going on as superintendent and said, "It will ruin us, ruin me, ruin you and everything else."

Q. Did he say something had to be done about that?

A. To the best I remember he did make some kind of remark like that.

Q. Now, was Mr. Roberts still in charge of a part of the Tennessee Consolidated Coal Company at that time?

A. As far as I know he was supervisor.

Q. Vice-president, did you know that?

A. Sir?

Q. Was he vice-president then, too?

A. I believe so.

Q. Did Mr. Roberts say that he didn't know what the company was doing or what the other officials of the company were doing then?

A. Before that came up, me and Mr. Roberts had had a talk about trying to get in another union ourselves.

Q. Well, that is very interesting, but I'd like to have you answer my question. Did Mr. Roberts say that he didn't know what the other officials of the company were doing?

A. He said he was having a meeting at Murfreesboro, he didn't know what the setup was.

732 Q. Well, was Mr. Roberts going to go to a meeting at Murfreesboro?

A. Yes, sir.

Q. Did he go to a meeting at Murfreesboro?

A. I think on Monday we all went.

Q. You went to the meeting yourself?

A. Yes, sir.

Q. Was Mr. Callis there?

A. Yes, he was.

Q. Mr. Roberts was there?

A. That's right.

Q. And was there anybody else there, anybody you didn't know?

A. Mr. Hampton and Judson Harwood.

Q. Judson Harwood. Let's explain who Judson Harwood is.

A. Well, he's a Nashville attorney.

Q. Did he represent that he was an officer in some corporation at that time?

A. I believe he pronounced he was president or vice-president of the Grundy Mining Company.

Q. He was president or vice-president of Grundy Mining Company?

A. I think that is the words he said.

Q. Had you ever heard of Grundy Mining Com-
733 pany before that?

A. I don't think I had.

Q. Did they tell you what Grundy Mining Company was?

A. They said it was to open up Grays Creek.

Q. Did they say who owned Grundy Mining Company?

A. I don't remember that.

Q. Did they tell you or have you since learned that Grundy Mining Company is a wholly-owned subsidiary of Tennessee Consolidated Coal Company?

A. I know it now, I didn't then.

Q. All right. And did Mr. Harwood tell you that it was the purpose of this meeting to get you truck mine operators to join up with the Southern Labor Union?

A. I believe Mr. Harwood expressed it that the time come we couldn't travel any longer with the United Mine Workers, we had to deal on top of the table and they had to be something done.

Q. Is that why he told you that he got the Southern Labor Union in there at Grays Creek mines that day?

A. I don't remember what he said was the reason he got it.

Q. He did tell you that he had called up this outfit and that he had got them to come in there, hadn't he?

A. There was something said about the Southern Labor Union being in there and they was going to be in
734 there the next day to work and—

Q. (Interposing) Well, didn't he tell you that he had invited them in there?

A. I believe he did, I ain't certain about that.

Q. Were you told that arrangements would be made for you to meet with the Southern Labor Union?

A. The best I remember he said he would make arrangements for us to meet with the Southern Labor Union representative if we wanted it.

Q. He told you that the company, if you did that, that the company would bond you on some new business and if you wouldn't the company would not bond you on new business?

A. They did, the way he said that, if we didn't deal on top of the table, the company could not afford to bond us on new business.

Q. Did Mr. Harwood tell you what kind of a contract you would get with the Southern Labor Union?

A. My best recollection he didn't

Q. He did not. Have you ever had a contract with the Southern Labor Union, Mr. Higgins?

A. No, sir.

Q. Well, now, this meeting that you have been discussing with me occurred on August 15th, 1960, a Monday, didn't it, Monday morning?

735 A. That's the time we went to Murfreesboro, to my best recollection.

Q. And do you recall whether that was the day that the Grays Creek mines were to be opened up?

A. I believe Mr. Harwood told us that Mr. Paul Gibbs tried to get into Grays Creek that day.

Q. That was the first time?

A. That was his first trip, yes.

Q. All right. Now, you have told us that you were sued by the United Mine Workers Welfare Fund and that that suit was dismissed in the summer of 1962?

A. It was dismissed somewhere along in there.

Q. You don't recall exactly?

A. I don't remember exactly when.

Q. Were you taking the position in that lawsuit that you really weren't a party to any agreement with the United

Mine Workers, wasn't that your position, and that the agreements that you had signed were nothing but pieces of paper as far as obligating you were concerned?

A. The best I remember about that was that they signed the contracts for initiations and dues.

Q. Well, you saying that the contracts were nothing but pieces of paper as far as requiring you to pay the Welfare Fund and the wages?

A. That's right.

Q. And that was the basis on which you had signed
736 these contracts?

A. That's right.

Q. And, as I recall, you testified to that effect in this very courtroom?

A. I did.

Q. And it was after that that these suits were withdrawn, right?

A. That's right.

Q. In the fall of 1962, did the United Mine Workers give you a notice that your agreement was cancelled?

A. The best I remember I got a notice in August that my —

Q. (Interposing) Sixty-day notice?

A. Sixty-day notice, which run out in October.

Q. And it was following that that you and all of the other coal companies, or at least most of the other coal companies of the valley formed the Sewanee Coal Operators Association?

A. I believe that is right, I don't remember.

Q. Were you an officer in that association?

A. I was an officer, but the position I don't remember what, what I was.

Q. A director?

A. I was on the negotiating committee, I know, and I don't remember whether I was on anything else or
737 not.

Testimony of Howard Higgins—Cross

Q. Who did the talking for the association, did you, at these meetings, who was the spokesman?

A. Mr. Bill Ables was the chairman and Mr. Houston Beaumont.

Q. Grundy Mining Company and Tennessee Consolidated were also members of this association?

A. The vice-president of Grundy Mining Company, which is Mr. Houston Beaumont.

Q. Mr. Beaumont is an officer in the Tennessee Consolidated and Grundy, right?

A. I don't know.

Q. He works for the company you get your land from?

A. That's right.

Q. And they were doing the talking?

A. Mr. Bill Ables, I think, was doing most of the popping off.

Q. Did your mine continue to operate up until December 26, 1962?

A. The last day it worked was in December 26, 1962.

Q. You have explained that you lost work when some of your equipment was destroyed in the fall of that year, lost two weeks or something like that?

A. Two weeks in September.

Q. With the exception of that two weeks, did you work continuously on up to December 26th?

738 A. Excepting one day.

Q. Except for one day. So if there was a picket line at Grays Creek during the fall of that year, it didn't stop you or your men from working?

A. It didn't stop them in Floyd Hollow up until December the 26th.

Q. And, of course, you know that your employees were told to work by Mr. Turnblazer?

A. I don't know what Mr. Turnblazer told them.

Q. You know that he told you that, don't you?

A. I don't remember even having a conversation with Mr. Turnblazer.

Q. Were your men members of the union then?

A. They was.

Q. Now, you have told us about some picket lines that occurred there after December 26th and in January and February.

Now, were these men by and large the men that had worked for you and the other truck mine operators and Grundy Mining Company prior to December 26th?

A. Some of them was, yes.

Q. Most of them were, weren't they?

A. Well, they was too many of them men, I took several of my boys to Grays Creek when I left over there.

739 Q. You were working in Grays Creek then after the first of '63?

A. Some of the boys working in Floyd Hollow No. 4 went to Grays Creek when I got the mines opened up and ready to go to work over there.

Q. Have you been working in Grays Creek ever since 1963?

A. Ever since '62.

Q. 1963?

A. '62.

Q. Ever since 1962?

A. About, let's see, I went in there and started in August, I went back to Floyd Hollow and built a new tipple and new vents and went back to Grays Creek in about the first of September, I have been there ever since.

Q. How far is your mine that you are operating now from the mine you had in Floyd Hollow?

A. Something like 9,000 feet.

Q. 9,000 feet?

A. That's the best I understand it.

Q. Did you go to work in Grays Creek as an employee or foreman?

A. I went to work as a foreman.

Q. Did you have some sort of a written agreement with the company then?

A. I had a written agreement and an understand-
740 ing that any time I wanted to take up an option on the mines I could.

Q. Did you have a written agreement that you would hire a group of employees and pay them the Walsh-Healey wage or the fair labor standard minimum wage, whichever was less, for a period of five years or something, some agreement like that?

A. What did you say about the last?

Q. Did you have an agreement with the company that you would round up a group of men and bring them in there to run this mine over which you were to be foreman, was that a part of your written agreement?

A. I did have that kind of agreement to not pay less than the minimum wage.

Q. And not only to not pay less but that's what you would pay, wasn't it?

A. Well, anybody been in the coal business at that time knew that is all you could pay.

Q. But you are saying that you had an option to buy that mine, is that right?

A. Yes.

Q. And did you ever exercise that option?

A. In December of '63 I did.

Q. And you have been running the mine ever since as an operator?

741 A. No, sir, I sold it.

Q. You sold it?

A. Yes, sir.

Q. At the time you sold it, did you get another mine?

A. I was working as foreman and partner in the company at the time and sold it.

Q. I am sorry, I couldn't get that, Mr. Higgins.

A. I said I was working as a foreman and a partnership with the company in another mine at the time I sold it.

Q. Did you buy this other mine in which you were working?

A. No, sir, we are still working it the same way.

Q. You have a partnership interest in it?

A. In the Walnut Coal Company, I own 49-percent interest in it.

Q. What is the name of the company?

A. Walnut Coal Company.

Q. You have 49-percent interest?

A. Yes, sir.

Q. Who has the other 51?

A. Tennessee Consolidated Coal Company.

Q. What is your position with this company?

A. President.

Q. You work in it?

A. I work in it and around it.

742 Q. Do you direct the work of the employees at that mine?

A. Yes, sir.

Q. Do you load any coal in it?

A. No, sir.

Q. You do do the superintending of the mine?

A. Yes, sir.

Q. Are you paid a salary?

A. Yes, I am paid a salary.

Q. Do you get a part of the profits of the mines in addition to your salary?

A. Yes, sir.

* * * * * * * * * *

747 By Mr. Rayson:

Q. Mr. Higgins, are you paying the minimum wage at this mine you are now operating?

A. No, I am paying a little better than the minimum wage.

Q. Have you always paid a little better than the minimum wage there?

A. On the average my coal loaders always made better than the minimum wage.

Q. What about your shift men?

A. At the present I am paying the minimum wage with

a half-hour overtime to the tractor men, putting up the motor and putting them on charge.

Q. Are they working a half-hour overtime?

A. Something like that, anywhere from 15 to a half-hour overtime.

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751 REDIRECT EXAMINATION

752 By Mr. Walker:

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756 Q. Now, prior to this time of returning to work, did you work any any wages or other provision of employment with any District 19 representative, any president of any local union or any mine committee?

757 A. Mr. Dykes was the president of the local. When Mr. Roberts promised to try to get us some work, he said to get with the mine committee representatives and see what we could work out. We did work out agreements.

* * * * * * * * * *

Q. What kind of an arrangement did you work out at that time?

A. They went back to work at that time for $1.12 a car, 75 cents a day for vacation, if they lost a day they didn't get their vacation, and the minimum wage for hourly work.

* * * * * * * * * *

758 WILLIS FLYNN,

a plaintiff, called as a witness at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Would you state your name, please?

* * * * * * * * * *

A. Willis Flynn.

* * * * * * * * * *

759 Q. Do you recall signing the National Bituminous Wage Agreement in 1950?

A. I signed it in 1952.

Q. Where did you sign the 1952 amendment?

760 A. At Palmer, Tennessee.

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Q. Do you recall anything that was discussed in regard to the 1952 amendment?

A. All that was discussed in my presence was that we had to pay a token before they would let us sign the agreement in the Welfare.

Q. And who did you discuss this with, sir?

A. I paid the money to Mr. Bryan Parmalee, paid by check.

Q. Now, I can't hear you, Mr. Flynn.

A. I said I paid to Mr. Bryan Parmalee by check.

Q. What did you pay him?

A. I believe $270.

Q. For what?

A. It was Welfare payment.

Q. Is that a payment on your tonnage that you had mined up to that time?

A. That was just payment that I made so all the way they would let us sign the agreement.

* * * * * * * * * *

761 Q. Do you recall anything unusual happening at the time you signed this agreement?

762 A. We had, before they would let us sign this agreement we had to sign an authorization slip to bid the coal on new business high enough to pay the full 40-cents' welfare.

Q. What was this authorization, sir?

A. It was an authorization for the company to check the

40 cents off of us on new business. They said they realized we couldn't pay it under the contract we had at this time, pay what we could, with any new business bid it in high enough to get the full 40 cents.

* * * * * * * * * *

763 Q. I will ask you if during the period of September 1 or about September 1 or September the 2nd you attended any union meeting or rally at the Whitwell High School, this is in the year 1955?

764 A. I went down to the meeting, yes.

Q. Do you recall any District 19 or International Union representatives present at that time?

A. Mr. Albert Pass was making a talk when I got there.

Q. Do you recall any parts of the talk that Mr. Pass made at that time?

A. He said they was going to have the full 40 cents or the truck mines would be shut down.

* * * * * * * * * *

Q. Did he use any expression?

A. He said grass would grow over the mouth of the mines before they would work, until they had an agreement to get the full 40 cents.

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766 Q. Do you recall what District 19 or International Union representatives were present?

A. Mr. Gilbert was there.

Q. Did you have any discussion with Mr. Gilbert at this time?

A. Yes, we talked about it.

Q. What was the nature of your discussion at this time?

A. It was on the Welfare and the wage.

Q. Do you recall any specific remarks or statements that were made at this time?

A. It was the same thing, that we would have to pay what we could on the Welfare and if we could work out an agreement with our men, and he didn't have any complaint,

why, he wouldn't interfere with us, he wouldn't come around the mines.

* * * * * * * * * *

767 Q. How was the business at your mine during the period 1955 to '56?

A. I believe we worked up until some part of '56.

Q. Did you work generally the same period that the mine operated by Mr. Howard Higgins worked?

A. I did.

Q. Were you all in the same location?

A. Yes, we was in the same area.

Q. Working on the same property?

A. That is correct.

* * * * * * * * * *

775 Q. Going back to the time just preceding the return to work in November, do you recall any discussions or negotiations you might have had with the Tennessee Consolidated Coal Company and District 19 and local union committee representatives?

A. I can't remember.

Q. At the time the previous truck mine contract expired, were you involved in any negotiations with any of the District 19 International Union representatives or your local union committee representatives regarding the pos-
776 sible submitting of new bids and working out of wage agreements?

A. Yes, I believe I can remember, if I can remember correct, why, the men was wanting to work and we come to Chattanooga and talked to some of the TVA officials, and Mr. Hill. The records will show if this is the correct date on that.

Q. Did any of the District 19 or local union committee members go with you at that time?

A. No, they wasn't over here with us.

Q. We can't go into that. Would you tell us after this meeting in Chattanooga, did you have any discussions with

your local union committee or any District 19 representatives regarding wages?

A. I talked to Mr. Gilbert about it, or we did, I don't remember just who was in on it, but told him that the TVA had told us that we weren't dependable, they didn't think we could get any business, that we couldn't fill the orders if we got it, we couldn't get the men to work.

Q. Did you have any discussions with regards your wages with Mr. Gilbert and the Welfare at this time?

A. Yes, we did.

Q. What was the nature of your discussions?

A. He told us to pay what we could on the Welfare and work out the agreement with the men on the wages.

Mr. Rayson: Is this now in 1957?

777 The Witness: He told me that at different times, Mr. Rayson, I don't remember the correct date.

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779 Q. Were you a member of the Bee Branch or Floyd
780 Hollow Association?

A. I was a member of the Bee Branch group.

* * * * * * * * * *

Q. What was the purpose of the Floyd Hollow-Bee Branch group, Mr. Flynn?

A. If I remember correctly, that was after we had signed the authorization for the company to check the Welfare and, if I remember this correctly, they had bid the coal in before this time, and we put the bids in this time so the company wouldn't be responsible for the Welfare, if I remember that correctly.

Q. Were you on any of the committees that prepared the bids or worked out the provisions of the bids as regards the Welfare and the wages that would be included in the bid?

A. Not that I remember.

* * * * * * * * * *

781 Q. I was speaking to the reporter. Did Floyd

Hollow and Bee Branch submit a bid for a TVA contract?

A. Yes, they did.

Q. Was that bid successful or unsuccessful?

A. It was successful, I believe, this time.

Q. Do you recall when that bid was opened or the contract awarded?

A. No, I can't.

Q. Were you sued by the United Mine Workers Welfare Fund?

A. I was after we started to work on this contract.

Q. Did you work regular after you started on the contract?

A. Yes, we filled that contract, I believe it was 15 months without any interruption, because they made it so hard on us getting bids in and all that we had an understanding with the president of the local, the committee of the local and all, that we would work and fill the orders without interruptions, if I remember that right.

* * * * * * * * * *

787 A. They had been this four or five men on the picket line for weeks, off the No. 11 mines down there.

Q. Did you ever see any District 19 or International Union representatives present at that picket line?

A. I have seen Mr. Madewell there and I seen Mr. Edwin Ross there at one time.

Q. I will ask you if at December the 26th, 1962, you saw any District 19 or International representatives present?

* * * * * * * * * *

788 A. I seen Mr. Madewell there on December the 27th.

Q. Did you have any discussions with Mr. Madewell?

A. I had bought some equipment and they had delivered it late on December the 26th night and they was a heavy picket line on December the 27th, a big crowd of people, men, and they wouldn't let anybody in to work and I asked

Mr. Madewell about taking some men down to take care of this equipment that they had unloaded about five or six hundred feet from the mines and he told me that the men had been mistreated, he thought, at No. 11 mines, and he was in sympathy with them and he would rather that there wouldn't anybody go in there.

Q. Did he make any reference at that time to the truck mines that were located in the area or in the Grays Creek area?

A. Well, do you mean the men working in them?

Q. Yes.

A. Repeat that.

Q. Did Mr. Madewell make any statements in regard to the small truck mines in the Grays Creek area at the time you were talking with him?

A. He said that the Grays Creek area belonged to the Palmer local, they was to have that territory.

Q. What is the Palmer local made up of?

A. The men that work in the mechanical mines.

789 Q. Did you see any other District officer or representative, International Union representative, at this particular picket line?

A. I seen officers of the local union there, I can't remember any other District representatives.

Q. Following the total strike of December the 26th, did you attempt to operate your Flynn mine located at Bee Branch?

A. No, the men was on the picket line that worked in that mine, a majority of them that morning.

Q. What did you do with your equipment located at the Flynn mine after December the 26th, 1962?

A. I had to let it stay where it was at until we finally went over the picket line, some of the men did, and we went in and worked, and, of course—

Q. (Interposing) Now, wait just a minute. I am speaking of the Bee Branch mine, Mr. Flynn.

A. Oh, we didn't work, we had issued a work call different times, but the men refused to work without a contract,

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804 CROSS EXAMINATION

By Mr. Owens:

* * * * * * * * * * *

807 Q. Let's get back to 1952. You were operating one mine?

A. Yes, sir.

Q. And you say you signed the '52 amendment to the contract?

A. Yes, sir, I did.

Q. And who was present when you signed that contract?

A. Well, Mr. Matt Bunch, they was most all of the operators on what we call the Whitwell side of the Pocket.

Q. Matt Bunch?

A. Palmer side, I mean.

808 Q. Matt Bunch was there?

A. Yes, sir.

Q. And most of the Whitwell operators?

A. And Mr. Bryan Parmalee was there.

Q. And they told you, or Mr. Bunch told you that you couldn't sign the contract until you showed evidence that you had been paying your Welfare Fund, right?

A. He didn't say I had been paying, he said we had to pay some before he would let us sign.

Q. You would have to pay it up?

A. Have to pay some money on it, there wasn't any amount set, different ones paid different amounts.

Q. And you paid it right then?

A. I issued a check to Mr. Bryan Parmalee for it to him.

Q. Then after you paid your check or made out the check, then what did Mr. Bunch say to you?

A. They would let me sign the agreement.

* * * * * * * * * * *

809 Q. What had you said previous to that that caused him to make that remark?

A. Who?

Q. Mr. Bunch.

A. He was telling us what he wanted us to do, what it would take for us to get to sign the agreement to go to work.

Q. He said you couldn't sign that agreement, they weren't going to make a contract with you until you paid up what you owed the Welfare Fund?

A. Until I paid some, that's right.

Q. And then you paid it?

A. I paid $270, I believe I presented a check in this courtroom.

Q. And then he told you that you didn't have to pay except what you could from then on?

A. That's right.

Q. And then the next—who was the next—when was the next time you signed the contract?

A. I don't remember.

Q. Well, was it in 1955?

A. I signed whatever years the record might show, whatever years that they was a new one made, why, I had to sign.

Q. And at that time Mr. Gilbert then told you in '55

810 just to pay what you could?

A. Yes, sir.

Q. And otherwise it was all right, you were to continue on then paying?

A. Yes, sir, continue working.

Q. Then Mr. Pass told you no, that you had to pay the full 40 cents?

A. On new business, didn't have to pay the full 40 until we got the new business.

Q. Then what contract were you working on at that time?

A. The contract, I believe, began in '54 and ended in '56, if I remember correctly on that.

Q. Then you started to paying the full 40 cents in '56?

A. Oh, I believe on the next contract we worked out was the 15, no, we filled in some coal for the Coal Valley mines, we didn't pay in on that.

Q. But you understood you were to pay the full 40 cents after you heard Mr. Pass tell you that, didn't you?

A. Yes, sir.

Q. You had signed a written agreement, a written contract that you would pay it, didn't you?

A. On the 15, the company was to withhold the 40
811 cents.

Q. That was to make sure they would get it because they didn't trust you any longer, did they?

A. That's right.

Q. So they thought, well, if they would get Tennessee Consolidated to withhold it that they would then get the 40 cents, isn't that right?

A. That was on the new business, on the new contract.

Q. You made that agreement with Mr. Pass and with Tennessee Consolidated and all of the other operators that they would pay the full 40 cents from then on and to prove it you signed an authorization for Tennessee Consolidated to withhold that?

A. We was to pay like we was paying until we got new business.

Q. I am talking about the new business part of it.

A. Yes.

Q. You made an agreement when you got new business that you would pay the full 40 cents and to insure that payment they required you to sign this authorization, isn't that right?

A. Yes, sir.

Q. They wouldn't accept your word any more, would they?

A. No.

Q. They wouldn't trust you any more, would they
812 A. No.

Q. Then what did you do after you made tha agreement with them?

A. On the new contract we got, why, my understanding the company was to withhold it and pay it, I don't know whether they did or not.

Q. Now, that's when you formed your Bee Branch partnership thing, wasn't it?

A. Yes, sir.

Q. And you thought that that was the way to get out of your contract and the understanding that you made with the union and your men is to form a partnership and, therefore, Consolidated couldn't withhold it, isn't that right?

A. I don't remember it that way.

Q. You didn't testify to that just this morning?

A. Well, I could have, yes, sir.

Q. Well, what did you testify to this morning? Let's hear you repeat this.

A. All I testified to this morning?

Q. No, about the authorization and the formation of Bee Branch.

A. They called us in to Whitwell and we signed the authorization at the old commissary at Whitwell.

Q. What was the purpose of this formation of the—what is it called, Bee Branch?

813 Q. The Floyd Hollow-Bee Branch Association or Company, or whatever it was.

A. That's the way the bids went in.

Q. What was the purpose of that Bee Branch-Floyd Hollow Company?

A. I don't remember.

Q. What did you testify this morning about it?

A. You will have to have it run back over, I can't.

Q. Now, I want to tell from your memory what you testified about. You can't remember, can you?

A. I don't believe I could get it out in the same words.

Q. Well, say then what was the purpose then?

A. I can't remember how I said it.

Q. You don't know the purpose of it now?

A. I can't think, no, sir.

Q. How did you get your money for the sale of your coal?

A. Where did I receive my checks?

Q. Yes. Who paid you for it?

A. Tennessee Consolidated Coal Company.

Q. And how much did they pay for?

A. I don't remember the price of the ton on that.

814 Q. Well, how was that determined, how much you were to get per ton?

A. Well, it was determined by the amount of coal that was bid in and then the company's royalty out of it.

Q. Now, you have to speak up and repeat that, I couldn't hear.

Q. I say it was determined by the price they got for the coal and then we paid the royalty, the company's royalty on it.

Q. They determined, they told you what the price was and how much they were going to take out of it and then gave you the remainder?

A. Yes, that was printed in the paper.

Q. You had a contract with them, written contract?

A. We had leases on the mines.

Q. And the leases show the amount of money you were to get?

A. It changed from time to time on different bids, it had been.

Q. Well, how would it change?

A. Well, we worked the contract out and bid in new ones, why, it would probably be different prices per ton for the coal.

Q. Would you tell them that you needed more money so you could pay the Welfare Fund?

815 A. I always wanted more money.

Q. Well, did you negotiate it up with them, the price up that you were going to get?

A. Well, the coal was always bid in what they thought they could get the most for it.

Q. Well, now —

A. (Interposing) And still get the business.

Q. All right. You testified about making these bids. Did you participate in determining how much money or how these bids were to be made?

A. We talked about it a time after we worked the contract out we was on and signed the authorizations, why, we couldn't get no more bids in, the price was so high.

Q. Did you go into figuring the bid, the mathematics of them?

A. I can't do that.

Q. You didn't participate in that at all, did you?

A. No, sir.

Q. You don't know what they figured in those bids?

A. I might have knowed at the time, I don't remember.

Q. You don't know what they figured for labor, administrative costs?

A. It might have been explained to me, I don't remember.

Q. Now, how did you pay your men, by check?

816 A. Yes, sir, most of the time.

Q. Most of the time?

A. Yes, sir.

Q. What do you mean by "most of the time"?

A. When I first started operating, I paid in money but later I went to paying by check all of the time.

Q. When were you paying them by check?

A. It was in the forties.

Q. In the forties?

A. Yes, sir.

Q. I mean from, say, 1952 on did you pay?

A. By check.

Q. All by check?

A. Yes, sir.

Q. Do you have those checks?

A. I might could find some of them, I don't know.

Q. Now, your tonnage, what was the United Mine Workers rate, say, in '55 for tonnage?

A. The best I can remember, why, it would run, seemed like 14 or $15 a day plus about 96 cents a ton for the coal.

Q. And you had a tonnage, you think, of 96 cents a ton, about that?

A. The best I can remember, I'd just have to refer to the contracts or something on that, because I can't
817 remember that.

Q. But you paid them more than 96 cents a ton?

A. It would run from a dollar thirteen to a dollar and thirteen cents a car, I believe it would run about seven and a half cents a hundred for the coal, that included their travel time and then we paid, I believe, 75, we paid the vacation part, pay part of the time by the month, so the last work we done we paid 75 cents a day for the days that the men worked.

Q. But under the contract they were to be paid a certain price per ton, let's say it is 96 cents, and then they were to be paid so much a day?

A. Yes, sir.

Q. Like the day rate?

A. Yes.

Q. And did you have scales, by the way?

A. To weigh the coal at the mines?

Q. Yes.

A. No, we weighed the cars, we would weigh a load of coal and then determine what each car held.

Q. So that what you were supposed to negotiate with the men or to settle with the men was to make a determination of how much more over the 96 cents you would pay in order to make up for this cash or the dollars that they were to receive like the day man, is that right?

818 A. Yes, sir.

Q And since you didn't have the scales and you had dif-

ferent-sized cars, why, you had to figure out how much tonnage that would take to make this up, wouldn't you?

A. Yes, that's right, I suppose.

Q. And there was always controversy, wasn't there, between you and the employees whether this was the proper amount that they were getting?

A. You mean whether the cars was weighed more than they was getting paid for?

Q. The size cars, you always had that argument, didn't you?

A. Well, occasionally it would come up, they would want to weigh the cars maybe, but not—but they wasn't—

Q. (Interposing) That's what Mr. Gilbert was saying that if you have a grievance over there then he would come up to the mines and settle it under the contract, didn't he?

A. He said to work out an agreement with the men and that he wouldn't interfere unless he had a complaint from some of the men.

Q. That's right. Now, what are the steps of the grievance machinery under that contract?

A. Sir?

Q. Give the five steps in the grievance machinery that is provided for in that contract.

819 A. I don't know, I don't.

Q. Well, isn't the first step that the man who has the grievance takes it up with his immediate superior or his foreman?

A. Could be, I don't know. You know more about that that than I do.

Q. Why, Mr. Flynn, you have been operating this mine or these mines for how long under a contract, under the Mine Workers' contract?

A. You mean how long, how many? We worked under, we would sign these agreements all of them until the last one, until the last one was cancelled out, I believe in October, the time run out in it in October in '61, I believe.

Q. Yes, when did you first start?

A. Oh, it was years ago.

Q. And you want to tell us now that you don't know how a grievance is settled under that contract?

A. I never did, we couldn't go by them no way, and I never did take that much interest in them, we never settled any by the contract.

Q. And that's why you couldn't understand what Mr. Gilbert was saying to you then, isn't that right?

A. I clearly understood what Mr. Gilbert said.

Q. Do you know what a mine committeeman is?

A. Yes, sir, I do.

820 Q. What is that?

A. He is the man that takes up the grievance at the mines.

Q. That's the second step, isn't it?

A. Well, if that's the way you want to put it, it is, yes.

Q. Then what is the third step in the grievance machinery?

A. You will have to tell me, I don't know.

Q. Isn't that when the District representative comes around to the mine and then tries to work out this grievance?

A. Could be, they wasn't any mine committee, wasn't any committee at the mines where I worked that I operated, they was a committee out of the local union hall.

Q. Well, that's right, that's a committee that was elected by the employees, is that correct?

A. True.

Q. Now, then, the third step is when the District representative would come around if you couldn't settle your grievance at the mine with the mine committee.

A. Well, it could have been.

Q. Well, is that right?

A. I say it could be, I told you, I don't know.

Q. And that's what Mr. Gilbert was saying, "If there is a dispute in pay and a grievance is filed, then I will

821 come around if you can't settle it"?

A. He said that if we worked out a wage agreement with the men he wouldn't interfere with the scale, wouldn't even come around and mention nothing about it unless he got a complaint from one of the men at the mines.

Q. He couldn't, could he?

A. I don't know whether he could or not, he did come.

Q. I mean, that's his job, it's that third step of the grievance machinery, isn't that right?

A. I don't know.

Q. You don't know what his job is or any of his duties?

A. Well, he represents the United Mine Workers.

Q. That's what he was trying to explain to you what his duties were, whether he could step in.

A. He didn't say it in them words.

Q. How much money was—you say you got a contract under the Floyd Hollow-Bee Branch Company?

A. Bee Branch Company, not Floyd Hollow, I wasn't on the Floyd Hollow.

Q. Is it the Bee Branch Company, is that what you call it?

A. I believe that's right, yes.

Q. And they are the ones that got the contract?

822 A. Yes, sir.

Q. In '58 or '57?

A. I believe that's right.

Q. And did the TVA pay Bee Branch for all of the coal?

A. You mean we get our pay direct from TVA?

Q. Did TVA pay Bee Branch for the coal?

A. The company paid us ours by check.

Q. Well, then, TVA must have paid—you are talking about the company, you are talking about Tennessee Consolidated?

A. Yes, sir.

Q. So Bee Branch just did the bidding?

A. I don't know how that was.

Q. But you never got any money from the Bee Branch Company?

A. It wasn't put that way.

Q. It wasn't what?

A. It wasn't put that way, I mean it didn't spell out Bee Branch Company.

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830 Q. When did you first hear of the Sewanee Coal Operators Association?

A. I don't remember the first time I heard of that.

Q. Who told you about it first?

A. Well, we talked among one another about forming it.

Q. Well, who did you talk to about it first?

A. I don't remember.

Q. Wasn't it formed by the Tennessee Consolidated Coal Company and the Tennessee Products?

A. I don't remember if they was even in on it or not.

Q. You don't remember if they were in there?

A. No, sir, I don't.

Q. Were they at the negotiations?

A. They was in on the negotiations, I suppose they would be, don't you guess?

Q. Mr. Beaumont was there, wasn't he?

A. Yes, sir.

Q. Was there anybody there from Tennessee Products?

A. Howard Human, Mr. Howard Human.

Q. Do you think the fact that they were there indicates that they must have been something in the association?

A. Well, I couldn't say, I can't speak for them, but

831 they could have been.

Q. Who was your spokesman?

A. Oh, Mr. Beaumont done the talking, a lot of it, and Mr. Howard Human, and occasionally somebody else in the group would say something.

Q. Well, what did Mr. Beaumont say?

A. They just talked about stuff, about trying to negotiate a contract.

Q. Well, what did they say?

A. Why, I don't remember what he said.

Q. Well, you remember what Mr. Turnblazer said. Why can't you remember what Mr. Beaumont said?

A. Well, he talked about the seam of coal out there, that it wasn't big enough, that it was too unregular for high wages and—

Q. (Interposing) And he said they couldn't pay the wage scale under the contract?

A. I believe that.

Q. To compete with the mines in Western Kentucky?

A. The big seam of coal, yes, sir, that's right.

Q. Then he said that, didn't he?

A. I believe so.

Q. He said that he wanted a wage scale that's lower than that that is in Western Kentucky?

A. We was asking for it, yes, sir.

832 Q. And if they could get the Mine Workers to agree to a lower wage scale than that in Western Kentucky that they could bid and get the coal that was being sold by the Western Kentucky mines?

A. I don't remember how much Western Kentucky was brought in it, but the lower wage rate, that was the purpose of the negotiations.

Q. I said Western Kentucky mines.

A. I said I don't remember what was said about Western Kentucky mines or we talked about the big, larger seam of coal, but I don't remember whether it was—

Q. (Interposing) That larger seam is in the western part of Kentucky, isn't it?

A. Well, I have heard of them being different places, different coalfields.

Q. But that's the only one that was selling coal down to TVA, though, isn't it?

A. I don't know, I seen where it comes from Illinois.

Q. Well, they wanted a lower wage scale than what was provided for in Illinois, didn't they?

A. I didn't say that, I don't know, I don't remember it being said that way in the negotiations.

Q. Well, it was said wherever it was.

A. Any place that it applies, I suppose.

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833 Q. Then you were insisting on labor board election
834 over there to determine whether the Mine Workers represented the majority of the employees, didn't you?

A. I don't know whether I did or not.

Q. Well, you don't know whether you did?

A. No.

Q. Do you remember they had an election over there?

A. Yes, I remember the election.

Q. And then have you bargained with the United Mine Workers since they won that election?

A. No, sir.

Q. You have refused, haven't you?

A. We just never did bargain, never did do it.

Q. Now, I want to ask you about December the 27th, 1962. You said you saw a large picket line and where was this?

A. That was the road that goes into Grays Creek from the Pocket Road.

Q. How do you know they were pickets?

A. After they wouldn't let us go in to work, they stopped us.

Q. Well, who was going in to work?

A. They was several men working in there, men from different parts of Sequatchie Valley.

Q. Is there any kind of a union building near that
835 place?

A. They was at that time, I believe.

Q. It's a local union hall right there, isn't it?

A. Not where they was at that morning.

Q. Isn't there a local union hall there?

A. Not the access road, there is where the Pocket Road turns off to 108 Highway going in there.

Q. Well, is that the local union? Where was that local union hall?

A. It was on the side of the highway there.

Q. And where did you see the picket line? I either can't follow these roads or I misunderstand you.

A. They formed that access road there, at the access road going into Grays Creek for a period of time and then they came back to the union hall and was on both sides, they was in front of the station and then in front of the union hall both.

Q. That's when they decided, "We are not going to work any longer without a written, signed contract," isn't it?

A. I guess it was.

Q. They all met there that day?

A. They was there that morning, they was on the road up there that morning.

Q. Now, what happened to that local union hall?

A. It burned down.

Q. It burned down?

836 A. Yes.

Q. They burned it down, whoever "they" is?

A. I guess they did.

Q. You didn't have anything to do with that, did you?

A. No, I wouldn't tell you if I did.

Q. Beg your pardon?

A. I said no, I didn't have anything.

Q. Any other local union building destroyed over there?

A. They was one burned in the Pocket, yes, sir.

Q. And do you know of any other shootings into the local union members' homes?

A. I know of three men being killed, I didn't see, I heard them talking about shooting up the town there at night. I would hear the guns firing and they would blow it up or burn it up, I heard the explosions, and I could see the fire

one night when they was a lot of burning, I could see the prints of it in the sky.

Q. Well, you saw or heard of them shooting into the homes and cars and trucks that belonged to the members of the union, didn't you?

A. No, sir, I didn't.

Q. You never heard of that?

A. No, sir.

837 Q. You never heard of that until just now?

A. Until when?

Q. You never heard of that until just now?

A. I didn't hear of no shooting in none of their cars.

Q. You never heard that that occurred?

A. Uh-huh.

Q. You never heard that occurred, shooting in any home of any member of the United Mine Workers?

A. No, sir, I didn't.

Q. Did you ever hear of any dynamiting of their homes?

A. No, sir.

Q. Never heard of Mr. Madewell's house being dynamited?

A. Yes, sir, I did, I read about it in the paper.

Q. And his automobile being dynamited?

A. I didn't know about his automobile without the paper *stated* it, if it stated it, I don't remember.

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838 Q. Now, you ever get any letters from the Welfare Fund asking you, though, or stating that they believed that you were delinquent in paying them?

A. They didn't state they believed, they said that I was.

Q. Said you were?

A. Yeah.

Q. Did you answer those letters?

A. I don't ever remember answering any of them.

Q. Did any of them ever come to you and ask to go over your books to determine how much you owed them?

A. I don't believe they did until they filed that suit.

839 Q. Just before that they told you they were going to sue you, didn't they?

A. Each letter, I believe, stated that they would take action if it wasn't paid, or something.

Q. Take legal action against you?

A. They finally did, yes, sir.

Q. And you took your letter, those letters to the lawyer, then, didn't you?

A. I don't remember.

Q. Well, who did you hire to represent you?

A. Mr. Paul Kelly at Jasper, Tennessee, and I believe it was a Mr. Rebman over here at Chattanooga.

Q. I didn't hear their names.

A. Paul Kelly at Jasper.

Q. Paul Kelly?

A. Jr., yes, sir.

Q. They advised you to form a corporation right away, didn't they?

A. I don't remember that.

Q. Well, you did form one right away, didn't you?

A. I can't remember.

Q. You don't remember when you formed your corporation?

A. No, sir, I don't.

Q. Didn't you testify just a few—well, 20 minutes

840 ago or more that it was 1958?

A. Yes, the year, but I don't remember the date.

Q. It was in 1958?

A. The best I can remember it was, I just have to refer to the records on it.

Q. Shortly after you got these letters that they were going to take legal action against you?

A. Oh, got them letters all through the years, way before that.

Q. Why did you form the corporation?

A. Mr. Paul Kelly formed it as an attorney.

Q. Why?

A. Huh?

Q. Why, why did you?

A. Why? For legal purposes.

Q. Well, what were they?

A. Do I have to state that, why I did it?

Q. Yes.

A. Well, it was, I guess, a man to say for my protection, if they was any damages got against me I wouldn't lose everything I had.

Q. Welfare then got a judgment it would be an empty judgment, wouldn't it?

A. I always understood that the mining equipment was what I owned around the mines, I would have lost it.

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867 REDIRECT EXAMINATION

By Mr. Walker:

Q. Mr. Flynn, talking about getting into your old mine from your new mine, did you examine your old mine?

A. Yes, sir, I did.

Q. What was the condition of the old mine?

A. The condition of the timber had all rotted out, part of it was built on stumps, most of it full of water, roof falling.

Q. I will ask you to tell me what you mean in the mining term of "rob work," what does this mean to a miner?

A. That means to bring, drive your haulage ways so you got to leave your blocks of coal to support the roof.

Q. Now, after you drive a mine so far and you stop, then you retreat, correct?

A. Yes.

Q. Now, as you come back out of the mine, is there

868 little or much coal left to be mined?

A. Now?

Q. In a mine, any mine after you drive in so far do you

stop going forward and start coming out, do you take the coal out in the pillars or stumps?

A. As you start back out.

Q. As you start back out?

A. I believe on the figures you get it's 65 percent of the coal driving up.

Q. How much of the coal in the block do you get as you come out?

A. Well, the roof conditions judge that.

Q. Well, normally?

A. Oh, I'd say get two-thirds of it or better.

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875 HERSCHEL A. DAFFRON,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ables:

Q. Would you state your name, please, sir?

A. Herschel A. Daffron.

Q. Mr. Daffron, where do you reside?

A. At Whitwell, Tennessee.

Q. How long have you been a resident of Whitwell?

A. I have been there practically all of my life, for better than fifty years.

Q. All right, sir. And what is your present employment, sir?

A. I am employed by the State of Tennessee as an industrial coordinator for the industries, State industries.

Q. All right, sir. When did you assume that position with the State?

A. In November, 1963.

Q. All right, sir. Mr. Daffron, in the earlier period in your life were you an employee of Tennessee Prod-

876 ucts and Chemical Corporation?

A. I was, sir.

Testimony of Herschel A. Daffron—Direct

Q. Would you state to us what date, or approximately what date, you went to work for Tennessee Products?

A. Well, of course, I was working at Whitwell when Tennessee Products came in and took over the mines. Since September the 1st, 1929.

Q. All right, sir. What duties did you assume or what was your official position with Tennessee Products when Tennessee Products took over?

A. Well, when Tennessee Products came in, I was made division mining engineer of their properties at Whitwell at that time.

Q. Yes, sir. Did you advance and serve in other capacities?

A. I did, sir.

Q. In 1945 were you still employed with Tennessee Products?

A. Yes, sir.

Q. And on that occasion did you receive a promotion of some nature?

A. I did, sir, prior to 1945.

Q. What promotion did you receive on that occasion?

A. I was appointed superintendent of the coal mines for Tennessee Products and Chemical Corporation at
877 Whitwell.

Q. Now, as superintendent what were your duties?

A. I was in charge of the mines, both management, labor and costwise.

Q. Now, which mines do you have reference to, Mr. Daffron?

A. The Whitwell mines.

Q. Now, are those what are referred to as the old Whitwell mines?

A. Right, sir.

Q. Do you recall when that mine was closed, the old Whitwell mine?

A. Yes, sir.

Q. What year, sir?

A. The official closing date of Whitwell was in June, 1946.

Q. All right, sir. Upon it being closed were you given duties in another mine?

A. Yes.

Q. What mine was that, sir?

A. The Reel's Cove Mine.

Q. How long were you associated with the Reel's Cove Mine?

A. I was associated, I was superintendent of the Reel's Cove Mine from about November, 1946 or '45, I believe, until it closed January the 31st, 1962.

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Q. Mr. Daffron, were the picket lines that I men-
891 tioned formed in 1963 on Daus, who set up the picket lines, who were the pickets?

A. In 1963?

Q. Yes, sir.

A. Now, if I remember correctly on the last part of December, possibly the last day of the month, there was a picket line set up on the road.

Q. Yes, sir.

A. On the Daus Mountain.

Q. Yes, sir.

A. This road leads from the highway up the mountain to the coal area.

Q. Yes, sir.

A. There was a picket line set up on that road.

Q. Yes.

A. That line was set up early of a morning and when I got up there the morning that it was there the men, the miners had all come back.

Q. Did you recognize anybody?

A. I went on up to the picket line, yes, sir, and I don't recall knowing but one man that was on that line.

Q. Who was that?

A. That's a fellow by the name of Mr. Bone.

Q. Bone?

A. But there was some more fellow on the line that
892 I recognized as Daus men but I didn't know their names.

Q. Now, Mr. Bone, do you know who he is?

A. Mr. Bone was a miner that worked in some of the mines there at Daus.

Q. These Daus men, did you know who they worked for?

A. I don't know who they worked for specifically, no, sir, but I had seen them going in and out and recognized them as Daus miners.

Q. Did Daus continue to work in spite of the picket lines or not?

A. No, sir.

Q. Did you all do any further work on Daus in 1963?

A. Not until possibly the first of February we made another attempt to operate the Daus mines.

Q. Well, what occurred on that occasion?

A. Well, we scheduled work and worked from about the first of February up until around the 20th and we were shut down by the picket line.

Q. Yes, sir. Now, this picket line on the 20th you mentioned, where was it located?

A. On top of the mountain, at the union hall location on top of the mountain.

Q. Did you observe how many pickets were present there?

A. I tried to, it was dark and I had the lights on
893 my car.

Q. Yes, sir.

A. And they were off of the road, the main road that I was traveling. Well, of course, in passing by I tried to see or tell pretty well how many men there was on it, I would say that, just guessing from the cars and the men that I saw, there was 75 or 80 men.

Q. Yes, sir. Did you recognize any of the men?

A. I couldn't see them, it was dark.

Q. Yes, sir. But they were located at, did you say the Daus union hall?

A. Location, yes, sir.

Q. Do you recall how long this picket line was maintained there, Mr. Daffron?

A. I went on over to some mines at the back side and as I came back most of the picket line had gone.

Q. Yes, sir.

A. And I believe after that time for not too long a time they moved that picket line down the mountain to the original place that it was first started and they would set this picket line up early of a morning, if nobody showed up for work they would leave.

Now, I say "leave", I would get up there and there was their fire and evidence that they had been there and then I would, of course, inquire down at Daus if the picket line was up and if I saw anybody that knew it, why, they would say, "Yes, they are up there."

894

Well, I would go on up, they would be gone.

Q. I see. Did Daus operate again during the period you were with Tennessee Products?

A. Daus?

Q. Yes, sir.

A. Yes, sir.

Q. Did it operate again during this period that you were—

A. (Interposing) Not after this February, 1963.

Q. All right, sir. After that did you assume any additional duties at Tennessee Products and Chemical Corporation?

A. Yes, we had Mr. Human, who was our manager of operations.

Q. Yes, sir.

A. Who looked after Whitwell principally but after Daus shut down, why, then I stayed pretty close with him.

Q. Yes, sir. In staying pretty close with him did you

have the opportunity to observe the other mines or did you not?

A. Well, yes, together we would go around through the field and generally look over and see how everything was going, if anything had been bothered or how gener-
895 ally the picture of the thing was.

Q. Were there any mines working on the Tennessee Products and Chemical Company properties at that time, after the 21st day of February that you have testified about?

A. I don't think so.

Q. Did you inspect the area known as Griffith's Creek, the GC mines?

A. Yes, sir.

Q. Were they working on that occasion?

A. Not after February, I don't think.

Q. How about the Reel's Cove small mine, truck mine area?

A. I don't think there was anything on our property working, Daus or Whitwell either one.

Q. Now, you stated that you left Tennessee Products in what year, sir?

A. In August, 1963.

Q. In August of 1963 were there any mines working on that occasion?

A. No, sir.

Q. During this period of February on, Mr. Daffron, when you were back over at the Whitwell area, did you observe any picket lines?

A. In February?

Q. Yes, sir, and March that you were testifying
896 about your inspections, did you observe any picket lines or see any picket lines?

A. No, sir.

Q. There was no pickets at any of the mine entries?

A. No, sir.

Q. But the mines were not working?

A. They were not working.

Q. Yes, sir. Mr. Daffron, what is this seam of coal known as over there?

A. The Sewanee Seam.

Q. How long have you worked in that seam?

A. I went to work in that seam when I was 17 years old, and stayed in it 39 years.

Q. How would you describe that seam to the Court, would you just tell us what type it is?

A. That seam is a horizontal seam, has an average thickness of 39 inches.

Q. What other characteristics does it have?

A. Twenty per cent, we figure 20 per cent of the time that the coal pinches out or gets to a height that it can't be mined without taking what we call head room, that is, rock, shooting rock to get your equipment through.

Q. Now, when it squeezes out, what is that known as in the trade?

A. Well, actually we call it a squeeze but it is just
897 a thin coal area, is what it is.

Q. Now, are there other characteristics that this seam has, does it roll or is there such a thing as a roll?

A. Well, that is your roll, the thinning out is your roll.

Q. Yes, sir. Does that come with any degree of regularity in this seam?

A. With no pronounced pattern, no, you can hit it anywhere.

Q. In other words, it is not a uniform seam?

A. No, it is not uniform.

* * * * * * * * * *

899 Q. Yes, sir. Now, we are discussing the big mechanical mine at Reel's Cove?

A. Right.

Q. Was that considered a modern mechanized mine?

A. That was a modern mechanized coal mine.

* * * * * * * * * *

901 Q. This equipment you mentioned here, is it mobile equipment, up here at Reel's Cove?

A. No, sir.

Q. Do you know what type of experience—has any mobile equipment been sent in that you know of?

A. Not at Whitwell. When we say "mobile equipment", that is trackless mining equipment.

Q. Yes, sir.

A. Where it runs on the bottom without track on rubber tires.

Q. Yes, sir.

A. This equipment that we had at Reel's Cove was not mobile.

Q. It was?

A. It was shaker-conveyor. Now, I can describe
902 that to you, if you want to know what it is.

Q. Please do.

A. Well, a shaker conveyor consists of a shaker drive, that is your power unit, and as you advance your rooms you advance your pan line. The coal is conveyed by this reciprocating motion by this shaker-conveyor that brings it back to the belt or to the car and on the end of this shaker-pan line there is a mobile, not a mobile, it's a self-loading head called a duck bill, it was a power duck bill, due to the fact that it had a drum on each side with a rope on each side that came out and you anchored a jack over on this side of your room and one over here (indicating).

If you wanted the duck bill to go right, of course, it released this drum and it pulled the duck over right, if you wanted to go back this way you hit the button, it released this drum and brought your duck bill back to the left, in other words, a power duck swung across the face by power.

Q. Now, do you know of any mobile equipment that has been installed over there in the Sewanee Seam?

A. Yes.

Q. Whereabouts?

A. There was mobile equipment in some of the Daus mines and there was mobile equipment in some of the GC mines at Whitwell.

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904 CROSS EXAMINATION

By Mr. Rayson:

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905 Q. Now, what kind of a mine was the old Whitwell Mine?

A. That was a hand-loading mine.

Q. It was, however, a large mine, is that right?

A. It was a large mine.

Q. Did it have any equipment in it at all?

A. Yes, sir.

Q. Explain to us what sort of equipment was used in this large hand-loading mine.

A. Principally mine cars and electric locomotives.

Q. Are these locomotives—

A. (Interposing) And coal machines, cutting machines.

Q. Well, what was the sequence of the operations
906 so that we will understand?

A. Well, at first the cutting machine undercut the coal in the working face, that was on one shift. The miner came in, he blasted the coal down, extended his track to the face, the mine locomotive would bring in mine cars.

Q. Would they be on rails?

A. On rails. And cut them loose at the room neck. The miner would push this car into the room and load it and push it back out to the entry where the mine locomotive would get it, take it outside to the tipple.

Q. Did he push it out just through his own force and strength?

A. Right, yes, sir.

Q. And how did he get the coal into the car?

A. With a shovel.

Q. What was the production of that mine, Mr. Daffron?

A. At the time I was there about 2,000 tons per day.

Q. Was its production, in other words, comparable to that on an overall tonnage basis of the subsequent production of Reel's Cove?

A. Well, we ran more coal at Reel's Cove in a day than we ever did at Whitwell. I think possibly Whitwell's maximum tonnage, if we want to put it that way, was about 22 to 2300 tons per day, and our maximum tonnage reached 2700 and something at Reel's Cove in one day.

907 Q. All right, sir. How many men did you have working in the old Whitwell Mine?

A. I'd say there was 500.

Q. Were there 500 when you closed this mine in 1946 or had you already—

A. (Interposing) The working force had been reduced some. We had taken some men from that mine and transferred them to the Reel's Cove Mine.

Q. All right, sir. But, in any event, in 1946 whatever men were left were laid off?

A. Yes, sir.

Q. Now, what was the state of the Reel's Cove Mine at that time? As I understand, it had started in 1944?

A. Yes, sir. They opened up Reels' Cove, started in 1943, took about a year to open the mine up, put the belt line down the mountain, the railroad in and the coal tipple at the top and at the foot of the mountain, so it started in 1943 and in 1944, I believe in August, we ran the first railroad coal car of coal out of Reel's Cove Mine.

Q. What was the production in Reel's Cove in 1946 when you were transferred over there?

A. About 350 tons a day.

Q. It had just gotten up to that level from zero, is that right?

A. Right.

908 Q. Now, you have explained that you finally got the production up there to around 2500 tons a day?

A. Yes, sir.

Q. At what point did you reach that level of production?

A. We gradually improved from '46 until '48 on our equipment that we had there and in 1948 we abandoned the chain lines on the conveyor and went to the power duck bill, this is the self-loading head on the shaker-conveyor that I explained a while ago.

Q. All right. Before you got the power duck bills, what sort of production were you getting out of Reel's Cove?

A. I son't think we, until we put the duck bills in, I don't believe that we exceeded 500 tons per day.

Q. All right. Then when you got the duck bills, what did you do?

A. It immediately began to increase.

Q. And then did you get it up to the 2500 tons?

A. We went up to the 2750 tons, I believe in one day, that was a double shift, 16 power duck bills double shifting, that was the coal that 32 duck bills would produce in one shift.

Q. All right. Now, Mr. Daffron, how many employees were you using to get out this production at Reel's Cove?

A. I think possibly 250.

909 Q. About half of the number you used at the other mine, is that it?

A. Yes.

Q. Has that been the last major reduction in force of the Tennessee Products land?

A. I don't understand the question, sir.

Q. Is that the last time you had a substantial layoff at Tennessee Products in connection with the decrease in your work force from the old Whitwell Mine to those employees you worked at the Reel's Cove Mine?

A. No, we had several reductions in labor force at Reel's Cove Mine.

Q. All right. Now, I'd like you to compare the machinery you used initially in the Reel's Cove Mine with that you

used in the old Whitwell Mine, what changes did you make?

A. Well, about the only change that we had Reel's Cove to start with that we didn't have at Whitwell was a chain conveyor.

Q. What did that replace?

A. A chain conveyor took the place of the mine car, we took the coal machines and what-have-you with us, instead of putting in track and mine cars we used chain conveyors.

Q. Did you find these unsatisfactory?

A. We got some of them new and some of them second-hand.

910 Q. Well, I say, did you finally replace the chain conveyors then?

A. We did with the power duck bill.

Q. How did you get the coal out with the power duck bills after you got the coal loaded, how did it get out of the mine?

A. It discharged onto a room belt conveyor, we built a belt conveyor in one of the rooms and we had four of these duck bills in a face driving parallel with one another and this coal would shed back from each unit back up on this cross belt, this cross belt would come out into the number one room and discharge onto a room conveyor belt that went back to the main line and discharged on what we call a mother belt, this we picked that coal up on the mother belt and brought it to a central loading place in the mines, where we put it into the mine cars.

Q. Well, did you have this system of belts in the old Whitwell Mine?

A. No, sir.

Q. So you had, in addition to the duck bills, finally you had this system of belts which simplified your loading procedures into the mine cars?

A. All the coal that was loaded on the face was made up, was made up on belts, collected from the various belts and brought to the mother belt and the mother belt came

911 out to this central loading place on the main line entry and discharged into the mine cars to be taken out of the mines to the tipples.

Q. All right. Now, when did you experience your best production at Reel's Cove from a physical standpoint from mining conditions?

A. Well, 1957, I think, was our biggest year.

Q. Now, was that because of any mining conditions that you found at that time, was the coal good in that year?

A. Principally the increase in the production, there was no difference in the seam, principally the increase was due to the power duck bill setup and the number of duck bills that we were able to operate.

Q. You mean at times you can't operate all of the duck bills that you had?

A. Well, when you start building your production in a mine that's a slow process, you only put on equipment as you advance and are able to handle it.

Now, from the time that we started with three duck bills, gradually we went to sixteen over a period from 1948 to '57, it took us that long to advance and do other things that you had to do and get sixteen power duck bills in operation.

Now, you have the same thing when you go to working out, you gradually drop off, in other words, you have
912 a curve, you go from zero to maximum and from maximum down to where you quit.

Q. Well, did Reel's Cove experience the decline in the curve toward the end of its operation?

A. Definitely.

Q. How long was it in the process of working out, that is, in terms—

A. (Interposing) From 1957 I would say was the peak and it was declining in the same process that I explained in the advancing from '57 until the time it shut down in, I believe, January the 31st, 1962.

Q. Well, in the process of working out from 1957 on, did

you experience higher production costs because of this decline?

A. Well, we tried to offset that by a reduction in working force.

Q. Well, were you able to offset it completely?

A. No, sir, we wasn't.

Q. Well, will you explain to us why these increased costs would result in the process of working?

A. Well, I think what happened, the mine was working out, our man in charge knew that.

Q. Who was this?

A. Mr. Travis.

Q. All right.

913 A. Some of the repairs and things that we should have made on our equipment, some of the things that we should have purchased to went with it we didn't get it, we only did what we had to do with, consequently, our equipment got bad on us, power setup in the mines got bad, that with reduction in your working force and your reduction in your working units resulted in a higher cost.

Q. Was the fact that you were getting further and further away from the entry of the mine and had a longer and longer haul have anything to do with it?

A. That always has something to do with it, it costs you more, the further you pull your coal or take your mine in or out or anything you do with the mine, the further you advance that mine it costs you more money per ton.

Q. Well, Mr. Daffron, from 1957 on, were you making recommendations to the management to make these repairs?

A. I was, sir.

Q. Were they ignoring your recommendations?

A. More or less.

Q. Were these more or less routine repairs that you were recommending?

A. Well, at our peak we had what we call spare equipment, when a piece of equipment got bad on the face when

we would advance these rooms up and bring them back and bring this equipment back to the main line we would
914 get ahold of it and load it up and take it out for repair, we would have additional equipment on the outside at our shop to replace that.

Well, as time went on we didn't have that, that preventative maintenance was stopped, I will put it that way.

Q. Did this contribute to the fact that your production didn't get above nine tons per day?

A. Had to, yes, sir.

* * * * * * * * * *

916 Q. Now, Mr. Daffron, you have explained that you started economizing from '57 on or seeking to stabilize your costs by reducing your working force.

How were you able to accomplish that?

A. The only way we could do that, of course, would be cut off production units.

Q. Production units?

A. Yes, sir, production units and, of course, some of the non-productive men, we would cut them off, too, because if you took off a unit and you had a non-production man on that unit with four production men you could reduce it five, you would get four of your production men and one non-production man, what we term non-production.

Q. All right. Do you recall when you started to do this?

A. Well, I guess we started around 1958 or '59 starting to making our reductions in working force.

Q. Did you have about 250 men at the mine when you started on these reductions in force?

A. Yes, sir.

Q. What did you have when you finally quit that mine?

A. Approximately a hundred.

917 Q. Had you operated at various levels of employment in the meantime?

A. Right, sir.

Q. How many men would you cut off at a time?

A. Well, sometimes we would cut off 20 or 25 men at a time.

Q. Would that represent two or three units at a time you would be cutting off?

A. Yes, sir.

Q. Did you experience any strikes over these cutoffs?

A. One time we made a pretty heavy reduction in working force and we had a little strike over it but it didn't last long.

Q. What was the argument about in connection with that strike?

A. Well, mostly they were just tore up over losing their jobs. They didn't put up any argument, they just didn't want—if there was any way we could work them they wanted us to work them and I think that's what they were demonstrating, there wasn't any grievance brought before me.

Q. Who was the field representative there at that time?

A. I believe Mr. Gilbert.

Q. Did Mr. Gilbert, did you seek or ask Mr. Gilbert
918 to use his influence in getting the other men back to work?

A. I did that always, yes, sir.

Q. Did you find Mr. Gilbert cooperative or not?

A. Mr. Gilbert was very cooperative with me.

Q. Did you have occasion ever to call on any other District 19 representatives to assist you in any way?

A. Yes.

Q. Who?

A. Well, we would get into things there that we would call Middlesboro and they would always send us a man if we couldn't handle it down there at the mine.

Q. Were they prompt about sending someone?

A. Always when I called them they would come.

Q. Did they do what they could to get the mine back in operation?

A. Yes, insofar as I know. That doesn't mean that we didn't—we disagreed a lot on it but I took it that they were defending their members and, of course, I was defending the rights of the company. We didn't agree every time but it was, I'd say, in a spirit of cooperation.

Q. In the process of eliminating some of these from the mine from 1958 on, did you experience any work stoppages over seniority claims?

A. We would have, after we would reduce the working force we had so many types of seniority agreements
919 or past practices or precedents that had been set that when we would revamp our working force it was just almost impossible to place the men in line with what they thought that they should have.

Sometimes when we would make a reduction in working force they would strike a day or two over it until we could get ahold of the union representative and iron the thing out and then they would go back to work.

Q. How would these strikes start?

A. They'd just gang up there at the bathhouse and go back.

Q. Would this be the men themselves or would the District man be there encouraging them to strike?

A. No, that was among the men, the workers.

Q. How would the company go about settling these disputes?

A. Well, the first thing I would do when that happened I would call in my mine committee and we discussed the thing trying to work it out and a good many, in most cases we would work it out and go on back to work.

Q. You mean without the intervention of a District man?

A. In some cases, in some cases work it out with the local mine committee.

Q. All right.

920 A. But usually now when I called on them they would always call their representative to be with

them, most all of the time, and during the strike we had a District representative with them, they had brought him with them.

Q. Well, were you usually able to work these things out?

A. Yes.

Q. Did you ever take cases to some level beyond the mine committee?

A. Oh, yes, oh, yes.

Q. What would happen then.

A. Well, we would have to take it to the Board and the Referee where we couldn't agree, why, then the case was referred to the Board or an arbitrator.

Q. Well, was the company in these cases or in some typical case of this sort insisting that John Jones rather than Bill Smith would be entitled to the job?

A. I don't remember a seniority case having to go to the Board. We usually always agreed in the mine committee and the District representative could sell the men on the idea that it was reasonably correct that the way we had it, or we could make some minor adjustment that would satisfy the thing usually, it didn't make a whole lot of difference with us, the two men involved could do it. We were the victim of circumstances. We had to have the mine
921 committee and the District representative to put that idea over to the men. In most cases they agreed what it was or among themselves they were satisfied and we agreed to it.

Q. Did the District representative ever have any problems in trying to sell the men on one of these seniority decisions?

A. The men didn't always agree with them, no.

Q. Do you think that that put the union in a difficult position at times?

A. I have seen them in difficult positions where they thought they were, yes.

Testimony of Herschel A. Daffron—Cross

Q. Did you ever call upon Howard Madewell in any of these problems?

A. Yes, not too many times at the Reel's Cove Mine. I asked Mr. Madewell to help me at Daus with the truckers.

Q. Did he do so?

A. Yes, he was there.

Q. Did you ever experience any shutdown as a result of the employees of the small mines or the truck mines picketing at Reel's Cove?

A. I think on some instances they did picket Reel's Cove.

Q. Were these few instances or many?

A. Well, it wasn't too many. I don't recall how many but I do recall that sometimes the truck mines would
922 be out and they would stop Reel's Cove.

Q. In these instances did you find the District representative prompt in attempting to resolve the dispute and remove the picket line?

A. Yes.

Q. Did you have anything to do with the operation of the truck mines on the Tennessee Products property when they first started operations there?

A. Yes.

Q. When did the truck mines first start working on Tennessee Products' land?

A. In 1942.

Q. Were there few or many of these truck mines during the '40s?

A. Well, of course, they gradually increased from the time they started.

Q. Were you ever in charge of these truck mines?

A. I was on the beginning, I leased the small mines.

Q. You mean you gave the leases to the men?

A. In 1943 Mr. Myers was superintendent at the mines at Whitwell at the time the truck mines came in. Well, he left in '44 but in 1943, why, they were kind of getting to

where that they were increasing, you see, and he—I would lease them, of course, I was assistant to him.

Q. Who took your place in leasing and overseeing these?

923

A. Mr. Travis.

Q. Do you recall how many of these mines finally got into operation at any one time, if you know or if you can estimate it?

A. Now, are you speaking of the Whitwell area or all of it?

Q. I am talking of mines on the Tennessee Products land.

A. Well, yes, they had numerous, there were a lot of them.

Q. Well, did you get as many as 100 in operation at any one time?

A. I don't think we got a hundred.

Q. Seventy-five?

A. Possibly 40 or 50.

Q. Forty or 50 at one time?

A. I think that would be about it.

Q. Where did you start with these small mines?

A. We started over in the area known as the Pocket area, that was west across the mountain from Whitwell.

Q. Across the mountain from Whitwell in the Pocket?

A. Right.

Q. What would you do to start one of these mines?

A. At that time we would just lease it to the man and he did the rest of it.

924

Q. Would the company face off the mouth at the particular point?

A. No, sir.

Q. This was up to the man to do this himself?

A. They did that themselves on the beginning.

Q. At some point along the line did the company start facing up the mouth?

A. After Mr. Travis took over the truck mines he would

employ a bulldozer to push these mines off where the man wanted him to, the operator wanted him to.

Q. All right, sir.

A. But, now, I think that the operator paid for the bulldozer service, I don't think the company did.

Q. Now, did you give these men, these lessees, large tracts of land to operate in?

A. To begin with all the property that we could lease was what we call abandoned workings from the old mine.

Q. These were the Pocket mines to the west?

A. Yes, and the mines that were to be opened were to be opened up in the outcrop leading into the abandoned workings of the old mines.

Q. How far back would it be necessary for these mines to drive before they would get into the old mines?

A. Well, from two to 500 feet.

925 Q. Would they continue to work after they got into the old workings?

A. Yes, if they found conditions favorable they would, yes, sir.

Q. Would they always find conditions favorable?

A. Not always.

Q. What would it depend upon, Mr. Daffron?

A. Well, it would depend largely on water conditions and roof conditions.

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Q. How long would these mines run, how long would they be good for on the average?

A. Well, four or five years.

926 Q. Well, did you open up some other area for truck mines?

A. Yes.

Q. What other areas did you open up?

A. We opened up, I say "we", the company opened up, or Mr. Travis did, the Floyd Hollow area.

Q. What sort of mining conditions were there?

A. Well, that coal was what we call solid coal.

Q. You mean these mines did not work back into some old abandoned mines?

A. No, that was virgin territory.

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927 Q. All right, sir. But was it true on both the east and west side of the Pocket that mules were used?

A. Yes, there was some mules worked on the east side of the Pocket.

Q. What else—

A. (Interposing) Not too many, now.

Q. What other equipment did they have besides mules?

A. Rails and mine cars, pipes, mine fans.

928 Q. Did they have any cutting machines or anything like that?

A. There was one mine over there that had a cutting machine.

Q. Would this cutting—

A. (Interposing) To my knowledge.

* * * * * * * * * *

Q. Would this use of a cutting machine improve their production very much?

A. Well, I would assume that it would, yes. I didn't have any information on their production but I would assume that the coal machine would help.

Q. I take it that they used these mules to pull these cars out of the mine, is that right?

A. That's right.

Q. And then finally did they start substituting battery locomotives for mules?

A. Yes, sir.

Q. Would that help their production very much?

A. Yes, sir, that helped. You couldn't bring but two or three cars with a mule outside, you know, and, of course, he walked slow, slow going back. Take a battery locomotive, the battery locomotive could put 15 or 20 of

929 your small cars to it and go in and out pretty fast.

Q. Well, when did you start over at Floyd Hollow, about 1950?

A. Oh, shortly after that, I believe it was 1952 or '3, something like that, I am not sure.

Q. Well, by that time how was the typical truck mine equipped?

A. Well, the typical truck mine equipment at the time of the Floyd Hollow?

Q. Yes.

A. With mules, mine cars, pipes and rails and pumps and fans.

Q. Well, did you have some operators that were a little more progressive than that in Floyd Hollow?

A. Not at that time, I don't think so.

Q. What about as years went by, did you find them changing their methods?

A. Yes.

Q. What were they doing in changing their methods?

A. They were substituting the battery locomotive for the mules, was about the only thing that I could see.

Q. Did any of them have cutting machines?

A. No, they didn't have cutting machines, they didn't have any power at their mines.

Q. Didn't have any power?

930 A. They didn't have power at their mines. The only thing they had was a little portable generator for drilling or pumping.

Q. All right. What other areas did you open up for truck mines besides the Pocket and Floyd Hollow?

A. Slatten Hill.

Q. Slatten?

A. Hill.

Q. Hill?

A. That's right, that was in Bridge Creek.

Q. Is this in the same general area?

A. Yes, on the east side of the Pocket.

Q. Is this solid coal or was this driving into the abandoned works?

A. Yes, it had been abandoned by Tennessee Coal Iron and Railroad Company in 1906.

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931 Q. Are you saying that all of these mines that we have been discussing were mines that had an aver-
932 age life expectancy of four to five years?

A. Not all of them, no, sir.

Q. Some of them more and some of them less?

A. Yes.

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Q. Were these mines when you got over there comparable to both the hand-loading mines that we have already been discussing and the Griffith's Creek mines that we have also discussed?

933 A. Daus generally was a poorer operation.

Q. As a matter of fact, relatively speaking the coal was poorer at Daus, wasn't it?

A. The quality of the coal and the working conditions were lesser than would be at Whitwell, yes.

Q. Was there more ash in the coal or more impurities in the coal?

A. Yes, I think the ask content was some higher than the Whitwell coal, yes.

Q. And you say the mining conditions were also inferior to those at Whitwell?

A. Yes.

Q. How about Griffith's Creek, how did Griffith's Creek compare with Whitwell?

A. Griffith Creek was comparable to Whitwell.

Q. In mining conditions?

A. Yes.

Q. What about in the quality of the coal?

A. In quality, working conditions, in every respect.

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934 A. Well, now, a tipple is built at the pit mouth of the mines, usually they open up their mine up on a different level, the outcrop goes in horizontal and down about 20 or 30 feet off of the bench they push out a level, level off the ground down there and on this they build what they call a hopper or a tipple, usually these tipples are about 12 by 12 and 12 feet high, I mean that is the capacity.

Q. Have you ever built any of these yourself?

A. Yes, sir; yes, sir, I have built them.

Q. What are we talking about, how much does it cost to build one of these?

A. Well, I have built two or three.

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935 By Mr. Rayson:

Q. How much are we talking about?

A. I am speaking of a hopper or a tipple that is 12 feet by 12 feet in the bottom and 12 feet high.

Q. Was this typical of the kind that you observed around the Pocket?

A. In most cases in the Pocket, yes.

Q. And Floyd Hollow?

A. There was some tipples in Floyd Hollow that were a little bit more elaborate than that.

Q. How much are we talking about on the average?

A. On the 12 by 12, 12 feet high, is 80 per cent of the tipples at the truck mines.

Q. Well, how much would it cost to build one of those tipples?

A. Well, I have built them, I figured it cost me about $700.

Q. All right, sir. Now, in other equipment that they had in these truck mines, how much rail, how much money would they have tied up in rail?

A. Well, rail, what I bought, they was a demand for little rail, 16 to 20-pound iron we call it, we would pay for

new iron about $225 a ton. Now, if we could find, if
936 we could find some secondhand rails from somebody we would buy them for possibly $125 and we would have to go get them.

Q. Well.

A. The new rail was about 16 to 20, run around $250 a ton.

Q. Would these truck mines normally use new rail or used rail?

A. They would use just anything they could get ahold of.

Q. Could you remove the rails out of the old Whitwell Mine?

A. If there was any that they could use then and they could get ahold of them, why, they would take them to the truck mines.

Usually the rails in the big mine was too large for a truck mine operation.

Q. Well, how much in money would the normal truck mine that you observed in the Pocket and the hand-loading mine at Daus and these other places, how much money would an operator have to have tied up in rail?

A. Well, of course, again that depends on what type, I mean what size operation the man was operating or how long he had been operating. Are we speaking on about an average.

Q. On an average, yes, sir.

A. On an average, well, you could figure on an
937 average if a man pulled his rails out after he—I would say 15 to 20 tons of rail would be about what you find in the rails.

Q. Fifteen or 20 tons of rail?

A. Of rails would be about what the normal rail capacity of the mine would be.

Q. What about the mine cars?

A. Well.

Q. How many mine cars did most of these places have?

A. The mine cars?

Q. Yes, sir.

A. That depended largely on the operator. If he was a good operator, he usually had a good many cars, if he was a poor operator he just had enough to get by on.

Q. What is the value of the type of mine cars that were used in these truck mines?

A. A hundred dollars.

Q. All right, sir. Well, we will resist asking you about the cost of the mules but what about a battery locomotive?

A. Battery locomotive cost you about $5,000, that's a 4-ton, that's 4-ton battery locomotive, run you around $5,000. If you got a higher capacity cost you more money. We gave $10,000 for one.

Q. A cutting machine, what would one of those 938 cost?

A. A cutting machine new run you $8500.

Q. And other items of equipment that you found in common use in these mines that we haven't covered?

A. Nothing more than I have stated, sir.

Q. We have heard a little bit about copper in these mines. Where would the copper be found?

A. That would be in the electrified mines, the mines that had the power or the electric power up to the mines.

Q. Which of the truck mines had the power?

A. The GC mines were powered.

Q. Where would they use the copper in connection with the mines?

A. That was the trolley wire.

Q. Trolley wire?

A. That was adjacent to the track for the trolley poles for the electric locomotive.

Q. The GC mines used locomotives that ran on a rail with some sort of—

A. (Interposing) Electric locomotives, yes, sir, and they

had one in the Floyd Hollow, they had electrified mine over there.

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939 Q. Now, sir, you have testified as to having seen some picket lines in December or January or February of 1963, December, 1962. Did you go past or through any of these picket lines?

A. Yes.

Q. At any time were you threatened by any member of any picket line?

A. No, sir.

Q. Were you ever abused at any time?

A. No, sir.

Q. Did you ever see anyone abused or threatened at any time by any of these men?

940 A. No, sir.

Q. Mr. Daffron, has there been mining in this general area where Tennessee Products was working since about 1870?

A. Yes, sir.

Q. Did some of these truck mines work into areas that had been mined out as far back as that?

A. Well, they were opened up in what was known as the Victoria area back in 1870 or '75, the old Victoria Mine operated. Some of these mines were opened up adjacent to those workings.

Q. Could these truck mines work into areas that had been worked out in 1870?

A. They didn't get that far, they were short-lived, they didn't get—I don't know of any of them getting into the old mine, no.

Q. All right, sir. You are referring to some union halls at Daus. Do you know where they are on the mountain?

A. On top of the mountain, yes, sir.

Q. Are they still there?

A. The hall isn't, no.

Q. Do you know what happened to that?

A. Yes, sir.

Q. What happened to it?

A. It burned.

941 Q. Has that been while you were still there as superintendent?

A. It burned while I was in charge of the Daus mines, yes.

Q. Any other halls burn up there, Mr. Daffron?

A. Well, I heard that one had burned, another one I heard about it, I don't know.

Q. But this is the only one you saw?

A. That's the only one that I know and can verify to.

Q. Were you familiar with the Stephenson mine in the Victoria or V section, John Stephenson?

A. Yes, I was in one of his mines, V8, I believe.

Q. V8. Do you have any idea of how long he had to go before that mine would be exhausted?

A. Well, he had a good deal of coal available to him there that he could have gotten, now, I don't know whether he did or didn't.

Q. Well, on the average how long were those V mines working?

A. Well, I would say where they opened those V mines up, possibly it would have been 12 or 1500 feet in to the old workings.

Q. Twelve to 1500 feet?

A. Yes.

942 Q. So they actually would have a lesser life than the Floyd Hollow mines where they had 2,000?

A. Yes, unless they took the advantage of some of the old workings, which that depended again on whether or not the operator would mine that coal or not.

Q. Before you get into the old workings, could you have any idea of what you would find there?

A. Nothing only in a good many cases looking at your

map and getting—or unless you had been in there yourself or talked with someone that had been in there.

Q. Are these the workings that had been worked out around 1875 or so?

A. Well, on the south side of it is the Victoria but, now, John Stephenson's mine was going into the old No. 1 mine.

Q. When had that been worked out?

A. Oh, my goodness, No. 1 opened up, it worked 50 or 60 years.

Q. Would there be any way of telling whether you could mine in those abandoned workings now without first driving into it?

A. Not unless you had personal knowledge of what was in there.

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946 RECROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Daffron, while you were superintendent for Reel's Cove, were you asked by the company to investigate other mining areas to see what kind of new equipment could be used in Southern Tennessee on your property?

A. Yes, sir.

Q. Where did you go?

947 A. We went to some mines in West Virginia and some in Kentucky.

Q. Did you find any mining areas comparable to yours?

A. Yes, in some respects, yes, sir, the height of the coal and the horizontal seam.

Q. Did you find mobile equipment being used in those mines?

A. Yes, sir.

Q. Was this equipment more advanced than the kind of equipment you were using in the Reel's Cove Mine?

A. Yes, sir.

Q. When did you make this investigation?

A. I think it was in '58 and '59.

Q. Did you feel that you could improve your productivity by the use of this equipment?

A. Yes, sir.

Q. Did you recommend the use of this equipment for a new mine?

A. Yes, sir.

Q. To whom did you make your recommendation?

A. I made my recommendations to Mr. Travis, the manager of operations.

Q. Do you know what ever happened to your recommendations?

A. No, sir, I don't.

Q. Did you have in mind using this kind of equip-
948 ment in Reel's Cove Mine or in some other mine?

A. In a new mine.

Q. You felt that such a mine could have been operated successfully?

A. I thought at that time we could operate successfully with the mobile equipment, yes, sir.

Q. Where was this other mine?

A. Well, the mine that we were figuring on was known as the Morgansville Point Mine, that was directly north of the Reel's Cove Mine just across the gulch.

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REDIRECT EXAMINATION

By Mr. Ables:

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949 Q. All right, sir. Now, I believe you mentioned that you didn't see as many picket lines or no trouble or no violence there at the closeout. Did you all make an effort to operate there after the 21st day of February, 1963?

A. Not to my knowledge, no.

Q. Did you cross the picket line with a group of employees or were any employees available that would cross the picket line?

A. That I crossed?

Q. Yes.

950 A. Well, usually the picket line, if there was a picket line it was off to the side of the road and I traveled the road and I would go by them and come by them if they happened to be there.

Q. Yes, sir. But you didn't take any employees in that might go to work when you went across, did you?

A. No, sir.

Q. You went in only as a supervisor?

A. That's right. I would also indicate to the line, I would slow down and indicate to them that I wanted by and they would always wave me through.

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990 WALTER FRIZZELL,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

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1008 CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Frizzell, I believe you are a preacher, among other things, aren't you?

A. Yes, sir.

Q. Is that what they call you over there, "Preacher" Frizzell?

A. Yes, sir.

Q. You have had a rather varied career in unions, haven't you?

A. Yes, sir.

Q. Did you have some union activity in early 1963 in connection with some other union you haven't mentioned so far?

A. Yes, sir.

1009 Q. What was the name of that union?

A. Tennessee Valley Coal Miners Union.

Q. Now, I believe at this time you have already testified that you were working for Grundy Mining Company, weren't you?

A. Yes, sir.

Q. Worked regularly during these months, didn't you, '62, latter part of '62?

A. Yes, what time they didn't have me stopped.

Q. You were working most of the time, weren't you?

A. Most of the time, yes, sir.

Q. Who is the president of this Tennessee Valley Miners union?

A. I was.

Q. I believe you were the founder of it as well as the president, weren't you?

A. Well, I tried to found it, yes, sir, put it that way.

Q. As I recall, you did that at the suggestion of some of the people connected with Grundy Mining Company?

A. I did not.

Q. Didn't you seek some legal advice in connection with the orginaztion of that union?

A. Yes, sir, I seeked legal advice from my lawyer, the lawyer that represented me.

1010 Q. Who also happened to be the lawyer that represented the company, didn't he?

A. He does, he represents the company, yes, sir.

Q. Grundy Mining Company?

A. Yes, sir.

Q. You later consulted another lawyer, didn't you?

A. Yes, sir.

Q. Who was that?

A. Mr. Coffey at Murfreesboro, Tennessee.

Q. Did you go to Mr. Coffey at the suggestion of the attorney for the Grundy Mining Company?

A. I went to Mr. Coffey at the suggestions of my attorney, the one that I used.

Q. The same man who is attorney for the company?

A. Yes, sir.

Q. You took a group of men who were then working for Grundy Mining Company over to see this Murfreesboro attorney, didn't you?

A. Yes, sir.

Q. You took them over at somebody's expense, didn't you?

A. At my expense.

Q. How many men did you take over there, Mr. Frizzell?

A. I don't know, may have been four or five more men, I can't recall, but there was a car full of us.

1011 Q. Took them over and fed them and —

A. (Interposing) I fed them, yes, sir.

Q. You are saying you did all of this at your expense?

A. I paid for it with my own expense.

Q. Didn't you flash a roll of 10-dollar bills to those men and told them there was more where that came from?

A. No, sir.

Q. You deny that?

A. I did not, I deny that, yes, sir.

Q. Didn't you do that to some of the other employees out there at the mines?

A. No, sir, I did not.

Q. You are denying that?

A. I will deny that.

Q. Now, you made these—you had these original discussions with these lawyers, or at least some of them, back in November or December of 1962, didn't you?

A. Yes, sir.

Q. And then it was in January or February that you went over to Murfreesboro with these employees?

A. When?

Q. January or February of 1963.

A. About January, I think.

Q. About January?

1012 A. 1963.

Testimony of Walter Frizzell—Cross

Q. And you know, of course, that some of the foremen out there at those mines, truck mines that had been opened up on Grays Creek by Grundy Mining Company, including John Higgins, the fellow you were working for, were recommending to those men that they should join your union, didn't they?

A. I never heard it.

Q. You knew that is true?

A. I never heard it.

Q. You knew that Alton Johnson did that?

A. No, sir, I didn't know it.

Q. You know who Alton Johnson was, though, don't you?

A. I don't know Alton Johnson.

Q. Do you know a man by the name of Johnson who was a foreman, who had been a foreman at the Grundy mine?

A. I know Alton Johnson.

Q. Alton Johnson?

A. Yes.

Q. Well, you knew Alton Johnson had done that, didn't you?

A. No, sir, I didn't know it.

Q. You mean you didn't know anything of those foremen were then recommending to your fellow workmen
1013 that they join this union that you were trying to work up?

A. No, sir.

Q. You never heard of it?

A. No, sir.

Q. Then you later on had a closed-door conference with Mr. Callis, didn't you, didn't you have a meeting with Mr. Callis?

A. Yes, sir, I met Mr. Callis.

Q. As a matter of fact, you had more than one meeting with Mr. Callis about that, haven't you?

A. About what?

Q. About this Tennessee Valley Miners Union?

A. No, sir, just one meeting is all I ever had.

Q. Was there anybody else present on that occasion?

A. Yes, sir.

Q. Who was that?

A. Bill Allison.

Q. Anybody else?

A. Mr. Beaumont and me.

Q. In other words, you had the president, the vice-president, and the secretary-treasurer of Tennessee Consolidated Coal Company and Grundy Mining Company and you?

A. Yes, sir.

Q. About this Tennessee Valley Miners Union, is that right?

1014 A. Tennessee Valley Coal Miners Union.

Q. Tennessee Valley Coal Miners Union. Now, sometime along the line you were served with a charge, weren't you?

A. What kind of a charge?

Q. Did you ever get a charge or a copy of a charge filed by the United Mine Workers of America contending that you were conspiring with the Grundy Mining Company and Tennessee Consolidated Coal Company in forming this company union?

A. I didn't remember ever seeing one of those.

Q. Do you remember that you were charged, that the Tennessee Valley Miners Union and the company was charged by the United Mine Workers with violating the National Labor Relations Act?

A. Yeah, I remember it.

Q. Do you remember consenting to that charge, in fact, admitting that there was truth in that charge?

A. No, I didn't admit there was any truth in that charge.

Q. Didn't you enter into an agreed order disposing of that charge, Mr. Frizzell?

A. I did, I disposed of it, of that union.

Q. You disposed of that union, then you got the Southern Labor Union, didn't you?

1015 A. Yes, sir, I sure did.

Q. But I am asking you, didn't you enter into an agreement consenting to the consent judgment or disposition of that unfair labor practice charge against you and the Grundy Mining Company?

A. I went with Mr. Resson or Rayson or whatever his name is to Middlesboro, and he fixed it up, I don't know what he done, but we disbanded.

Q. Do you recall then when you entered into a settlement agreement?

A. I signed some papers, I didn't enter into no settlement agreement.

Q. I want to show you this settlement agreement or notice issued pursuant to that settlement agreement and I will ask you if you didn't sign that?

A. Yes, sir, that's my signature.

* * * * * * * * * *

Q. Do you recognize the other signature on that paper?

A. Yes, sir.

Q. Whose signature is that?

A. Mr. Ables.

Q. Signing as company on behalf of the Grundy
1016 Mining Company there or signing as an attorney on behalf of the Grundy Mining Company there?

A. Yes, sir.

Mr. Rayson: Your Honor, we desire to introduce this as an exhibit to the testimony of this witness.

Mr. Ables: Your Honor, I'd like to interpose an objection to this notice in the absence of the settlement agreement itself. We have no settlement agreement in the record, just a notice that was allegedly issued pursuant to the terms of the agreement, we don't even know what the terms of the agreement is.

Mr. Rayson: Well, I think that —

The Court: (Interposing) Well, the witness has identified that as being his signature. Now, as to the significance

of the document or its weight or relevancy is a matter we will just have to consider. I believe the objection should be overruled.

Mr. Rowntree: May we ask counsel the theory upon which he introduces it?

Mr. Rayson: The theory of the introduction of this document and connected with the testimony of this witness is to show the efforts on behalf of this witness and the company as reflected by its entering into this settlement agreement to form a company-assisted union to replace the United Mine Workers. It will show that this is being done.

Of course, the evidence of this witness shows that
1017 this was being done while this company was purporting to bargain in good faith with the United Mine Workers.

I believe that that is the substance of the relevancy at this time, Your Honor.

Mr. Rowntree: Of course, it's pursuant to the settlement agreement at the time when this union had been disbanded. Grundy Mining Company is not on trial here, not a party to this case.

May I inquire of counsel, was it sought to be admitted on the theory that Grundy Mining Company was seeking to obtain another union to represent its employees at this time in place of the United Mine Workers?

Mr. Rayson: And also those of the truck mines in the area, which are parties to this case, or which are being operated by men who are parties to this case, including Howard Higgins and Willis Flynn. I think that beyond all of these things, Your Honor, it has a relevance to show the overall situation which was obtaining at this time, the credibility of this witness, among other things, the fact that men have been accused of performing acts of violence and other misconduct, and I think that the situation which was obtaining in the area becomes a part of the overall picture which the Court should consider.

Of course, the fact that this witness has said that

1018 he disbanded the Tennessee Valley Coal Miners Union doesn't, to us, seem to mean very much, because he turned around and brought into the picture another union, and the evidence will show that this organization has a long history in the coalfield of being a company-assisted and dominated organization in many, many places, and that he has turned around and brought that one in which is, in other words, the same situation in scant disguise as the one he was trying to create here, and so I think that this thing has relevance for many, many aspects.

Mr. Rowntree: That's what I am seeking to determine, on the overall facts that this was a circumstance over all, we can raise no objection, but as to the aspirations on different people, that's when I am objecting to it. Certainly these plaintiffs were not a party to that case or a party to that settlement agreement, we would concede that it is admissible on the overall picture that the union's activities must be judged in connection with.

The Court: All right. Exhibit No. 115.

(The notice referred to above was marked D115 and received in evidence.)

Mr. Rayson: Your Honor, I'd like to read this notice, if I may. This is a "Notice to All Employees Pursuant to a Settlement Agreement Approved by the Regional Director of the Tenth Region, National Labor Relations
1019 Board," this is signed by Grundy Mining Company and by Walter Frizzell, president of the Tennessee Valley Coal Miners Union, and it is dated May 2nd, 1963.

"We will not contribute assistance and support to any labor organization of our employees.

"We will not recognize the Tennessee Valley Coal Miners Union, or any successor thereto, as the exclusive representative of our employees for the purpose of dealing with us concerning grievances, labor disputes, wages, rates of pay, hours of employment, or other conditions of employment, unless and until such labor organization shall have

been certified by the Board as the exclusive representative of such employees.

"We will not in any other manner interfere with, restrain, or coerce our employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist United Mine Workers of America, or any other labor organization, to bargain collectively through representatives of their own choosing, to engage in concerted activities for the purposes of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

"All our employees are free to become, remain or refrain from becoming members of any union or any labor organization."

By Mr. Rayson:

1020 Q. Mr. Frizzell, I am handing you what purports to be some membership cards to this same organization.

Are those cards that you used in connection with the Tennessee Valley Miners Union?

A. That is not my writing.

Q. It's what?

A. That's not my writing.

Q. Not your writing?

A. No, sir.

Q. Well, let me ask you to examine the card shown in that reproduction, and I will ask you if the form used is the type of card which you used in this Tennessee Valley Coal Miners Union?

A. That's the card we had made up, yes, sir.

Q. Where did you have those printed, Mr. Frizzell?

A. Mr. Coffey had them printed up at Murfreesboro.

Q. Did you ever pay Mr. Coffey his fee?

A. Mr. Coffey took it and said he would do it. I offered to pay him, and he refused pay for it.

Q. In other words, Mr. Coffey has never been paid in these matters?

A. I offered to pay him, I told him I would pay him for it, and he said that he would go along with me and if he got it set up, why, he would get his pay later on.

1021 Q. And you never told Mr. Coffey that you were going to be paid or that he was going to be paid by some other source?

A. No, sir, I did not.

* * * * * * * * * *

1022 By Mr. Rayson:

Q. Mr. Frizzell, you started to organize for the Southern Labor Union immediately after this union was disbanded, is that right?

A. I don't know just how long it was.

Q. Now, were you working as a night watchman during this period of time?

A. Yes, sir, I was working as a night watchman, as a night watchman, yes, sir.

Q. How long did you continue working as a night watchman?

A. Well, I just don't recall, but I went off from a night watchman and started building cars.

Q. You don't recall when that was?

A. It was sometime about '63, I don't know just exactly when it was.

Q. You have worked there ever since, I take it, until you became a paid representative of the Southern Labor Union early this year?

A. Yes, sir.

Q. By the way, who pays your salary now?

A. Now?

Q. Yes, sir.

A. The Southern Labor Union.

Q. Is that the account on which their paycheck is

1023 drawn?

A. Yes, sir, says, "Southern Labor Union."

Q. You don't happen to have any of your check stubs handy, do you?

A. No, sir, I don't.

Q. Are you an employee of this organization at its main headquarters or some local organization?

A. I am employed from Oneida, Tennessee, the main headquarters.

Q. And you have been active right now in trying to organize the mines of Willis Flynn?

A. Yes, sir.

Q. Howard Higgins?

A. Mine 14. No, sir.

Q. You haven't tried to organize?

A. I have not organized him because on account of the laws, government laws, I couldn't.

Q. What laws are those, Mr. Frizzell?

A. That's what my representative said, that's all I know.

Q. And you are working for the Welfare Fund of this organization?

A. Welfare of the Southern Labor Union.

Q. That's what you are working for?

A. I get a hundred dollars from the Welfare Fund
1024 and fifty dollars from the union.

Q. What are you doing for the Welfare Fund, Mr. Frizzell?

A. What am I doing with it?

Q. Yes.

A. I am not doing anything with it myself.

Q. You are not performing some service for that organization?

A. I am working for it, and we have got board members that looks after the Welfare Fund.

Q. What are you doing for this Welfare Fund?

A. Well, I am organizing and helping collect.

Q. But what are you doing for the Southern Labor Union's Welfare Fund?

A. Well, I am collecting for them.

Q. You are collecting for them?

A. I collect, yes, sir.

Q. You mean from these mines?

A. From these mines, yes, sir.

Q. How long have you had contracts for these mines?

A. Well, sir, I just don't recall how long we have had contracts with them and West Virginia, I've been collecting from.

Q. I am speaking of the ones in Southern Tennessee.

A. Maypon, West Virginia, and Southern Ten-
1025 nessee.

Q. Yes, sir.

A. We have had contracts with some of them, I don't know, about two year, and some of them less time and some of them I signed up this year.

Q. Some of these mines are subject to charges or complaints already issued by the National Labor Relations Board, aren't they?

A. Not as I have been advised, I have been advised different.

Q. During this period of time, have these companies paid something into your Welfare Fund?

A. Yes, sir.

Q. Can you tell us on what basis they have paid money into this Welfare?

A. They paid money because they had a contract with us.

Q. In what amount?

A. Sir, 10 cents a ton.

Q. At all times that has been the stipulated amount for these coal mines, is that right?

A. With Southern Labor Union?

Q. Yes.

A. Yes, 10 cents a ton.

Q. Has the wage been the Walsh-Healey wage, is that what your contract provides?

1026 A. Yeah, and over and above.

Q. For some of the special employees, yes, sir.

A. The ones that I have signed, yes.

Q. The base rate is the Walsh-Healey rate?

A. The wage rate is that and above that up to $26 and something.

Q. I am talking about your base rate, now, Mr. Frizzell, has it been the Walsh-Healey?

A. The basic rate? We don't have any basic rate.

Q. How many contracts have you signed up down here, Mr. Frizzell?

A. In this field?

Q. Yes, sir.

A. Seven or eight, I couldn't recall just exactly how many.

Q. Will you name the people from whom you have signed or with whom you have signed contracts?

A. Name the people?

Q. Yes, sir.

A. Bone Ridge Coal Company.

Q. Who is the operator of that company?

A. Joe Ramsey.

* * * * * * * * * *

1027 Q. All right. Anybody else?

A. Junior—Buck Layne Coal Company and Willis Flynn Coal Company, Mine No. 14.

Q. All right. Anybody else?

A. And Bill Myers Coal Company.

Q. Is that Marshall Meeks' former partner?

A. No, sir.

Q. I say, is that his former partner?

A. It's a new mines.

Q. Is that the man that used to work with Marshall Meeks?

A. Yes, sir.

Q. All right. Go ahead.

A. And Howard, I mean John Stephenson, it's — I forget that boy's name that is in with him, Floyd Stephenson, Floyd Coal Company.

Q. Is that the same John Stephenson that is interested in this case?

A. Yes, sir, but it's a new mine I signed.

1028 Q. All right, anybody else?

A. And McGowan Coal Company.

Q. Anybody else?

A. And McHoan.

Q. Hales McHoan?

A. McGowan and McHoan Coal Company in the Pocket.

Q. Now, are all of these mines the new truck mines?

A. They are new mines, yes, sir.

Q. On Grundy Mining Company?

A. Just opened up, some of them on Grundy and some on Tennessee Products.

Q. Are these the mines most of which started opening in the fall of 1962 when you went to work there?

A. No, sir, they had been opened this year, most of these mines. Now, this Layne and the Flynn mines in the Grays Creek area was opened up in '63, the latter part of '63, that was after October of '63.

Q. Well, are those mines the mines which Flynn and Layne opened up after the other mines they had?

A. After the other mines they had.

Q. After the other mines they had in Grays Creek worked out or they disposed of them?

A. No, the other mines are still working.

Q. They gave them to somebody else?

A. No, sir, it's still yet pending to see, it's still,

1029 you know, that decision that was handed down.

Q. You say that you collect money for these mines?

A. I pick up the checks.

Q. Pick up the checks?

A. Yes, sir. Sometimes whenever I am in the area, why, if they are behind on their Welfare, why, they have me as the agent to ask them and they will write a check and send it in to the office by me.

Q. They don't mail their checks in?

A. Sometimes they do and sometimes they get behind.

Q. Any other services that you perform?

A. Yes, sir, I organize.

Q. For the Welfare Fund?

A. No, sir, I don't serve any on the services.

* * * * * * * * * *

1031 JOHN WALLER,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ables:

Q. Would you state your name, please, sir?

A. Sergeant John Waller.

Q. Sergeant, what official position do you hold with the State of Tennessee?

A. Sergeant on the Highway Patrol.

Q. How long have you been with the Highway Patrol?

A. Twenty-three years.

* * * * * * * * * *

Q. Where were you stationed in 1963?

A. I was stationed in Manchester.

Q. You were in charge of the Manchester office?

A. Yes.

Q. Do you recall an occasion where you were assigned to duty in Marion and Grundy County, Tennessee, in January or February of '63?

A. Yes, sir.

1040 CROSS EXAMINATION

1041 By Mr. Owens:

1042 Q. There was a local union hall right near there, wasn't there?

A. Well, there was an old building there where they stood out in front there, I don't think they ever used the old building for anything, they just used to stand out in front there.

Q. Was that before they had burned that down?

A. You mean this instance?

Q. Well, was the local union hall burned down while you were there?

A. I believe it was, yes, sir.

Q. And what were the dates that you were there?

A. Well, I was there, oh, I can't recall the dates, I was—let's see—I was there in February, March, and April, I believe, maybe January or February, March and April.

* * * * * * * * * *

1049 JOHN H. BASHAM,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cameron:

Q. Would you please state your name, age, and residence?

A. John H. Basham; Route 3, Whitwell; age, thirty-three.

Q. Mr. Basham, have you ever worked in the mines

1050 in Marion and Grundy County.

A. Yes, sir.

Q. How long have you worked in the mines?

A. Since 1950.

Q. Were you ever a member of UMW of A?

A. Yes, sir.

Q. What local?

A. Local 7083.

Q. Is that —

A. (Interposing) Pocket local.

Q. Pocket local?

A. Yes, sir.

* * * * * * * * * *

1051 Q. Were you operating under a union contract?

A. Yes, sir.

Q. Were you obtaining a union scale at that time?

A. No, sir.

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1067 CLARENCE McGOWAN,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

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1068 Q. Would you state your name, please, sir?

A. Clarence McGowan.

* * * * * * * * * *

1071 Q. All right, sir. Were you able to put your plant into immediate operation in the fall of 1950?

A. No, sir, they put a picket line on and we didn't get to do anything.

Q. Well, now, I say, who put a picket line on?

A. The United Mine Workers.

Q. Who was that, who was present on the picket line?

A. Allen Condra.

Q. Who is Allen Condra?

A. He is a district representative, International representative.

Q. And what period of time did that picket line stay there?

A. It was on there three months.

Q. Had you signed a contract at that time?

A. Yes, sir.

Q. Did they tell you why they were picketing you?

A. They said it was on account of the Welfare.

1072 Mr. Combs: May I ask counsel what year is this?

Mr. Ables: 1950.

Mr. Combs: Thank you.

By Mr. Ables:

Q. Now, what do you mean "on account of the Welfare there," Mr. McGowan?

A. Wasn't getting all of their Welfare that they was supposed to be getting.

* * * * * * * * * *

1080 Q. Did you sign the contract in 1958?

A. Yes, sir.

Q. And on what occasion did you sign the contract, sir?

A. Well, Mr. Gilbert brought it around, said they had to be signed.

Q. Did he make any further statement about the '58 contract?

A. Nothing only just said, "Sign the contract and go ahead and work," just like we had always worked.

Q. Did he say that to you?

A. Yes, he said, "Just go ahead and sign the contract," said, "That's all there would be to it, just sign it." And that was it.

Q. At that time were you paying any Welfare?

A. No, sir.

Q. On your contract?

A. Not at that time, no, sir.

Q. Did you pay any in?

A. Yes, sir, I did.

Q. When did you cease paying Welfare?

A. Well, 1957, I didn't pay any.

Q. And you haven't paid any since?

A. No, sir.

* * * * * * * * * *

1085 Q. What type of operation did you have there at Daus?

A. Well, I had a mechanical mine, I had shaker-conveyors and diesel.

Q. What do you mean by shaker-conveyor in a truck mine?

A. It was a — you didn't have any cars, you just loaded your cars on the main line, you didn't have any cars, didn't have men loading into cars, you just loaded on a pan and it would shake the coal out to the car.

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1187 ERNEST CAMPBELL,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ables:

* * * * * * * * * *

1188 Q. Now, do you recall the number of that mine you all opened?

A. D235.

Q. And what type of mine was it?

A. Well, it is just a—when we opened it, it was just a mule mine, what we call it, you know, we pull our coal with a mule and hand-loaded it.

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1208 TOMMY CATES,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ables:

Q. Would you state your name, please, sir?

A. Tommy Cates.

* * * * * * * * * *

1209 Q. All right, sir. Now, do you recall what year you

were employed by Tennessee Products and Chemical Corporation?

A. Fifty-two.

* * * * * * * * * *

1211 Q. Were there mines in operation when you went up there as safety inspector?

A. Yes.

Q. Do you recall how many mines were in operation?

A. I'd say about 15.

Q. Fifteen?

A. Um-hmm.

Q. What type of mine were they?

A. They were hand-loading and mule driven haulage.

Q. All right, sir. Were there any battery locomotives up there on that occasion?

A. No.

Q. Any degree of mechanization at all?

A. No.

Q. Did you re-lease—lease an interest in the mine up there?

A. Yes.

Q. And with whom did you work on that occasion?

A. Jim Miller.

Q. Who is Jim Miller now?

A. At that time when Jim and I first started operating he was assistant vice president of mining.

Q. Assistant to the vice president?

A. Yes, assistant to Mr. Travis, Woody Travis.

1212 Q. And how long did you all operate there on Daus together?

A. You got me on those figures, I wish I had brought my records with me. I would say until 1962, some time in '62, then I went to operating for myself.

Q. Yes, sir. All right. Now, during this period of time from 1952, '53, you were in the coal business as an operator, as I understand your testimony.

A. Operator and safety inspector, that's right.

Q. Also as safety inspector?

A. Yes, sir.

Q. Now, did you actively manage those mines over there that you operated or how did you operate?

A. Yes, sir, in other words, we were under a TVA contract, we had to keep safety records straight and for the mines to be—if the mines had to be closed I had to close it down.

Q. That was your duty?

A. Yes, sir.

Q. Now, the mines that you and Mr. Miller operated or owned together, did you actively manage them?

A. No, I had a foreman under those mines.

Q. Yes, sir.

A. In every one of them I had a foreman in the mines.

Q. I follow. Were you all on a TVA contract
1213 yourself?

A. Yes, sir.

Q. How was your TVA contract arrangement?

A. Well, what we did, we put the coal at the ramp, as Mr. Campbell said a while ago, and we got so much a ton for putting it at the ramp plus we paid our haul bill, we operated under Tennessee Products.

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1214 In the year of 1959 did you do anything particularly with your mines there on Daus?

A. Yes, sir, we lost a contract with TVA and—

Q. (Interposing) You say "we". What contract?

A. The whole mountain, Daus Mountain lost the contract.

Q. Uh-huh.

* * * * * * * * * *

1215 The Witness: TVA told us that. I don't recall the gentleman's name but that was the way it was, we had to mechanize the mines and produce coal cheaper or we were out of the business.

Q. Now, when you proceeded—did you follow that?

A. Beg your pardon?

Q. Did you all go ahead and mechanize those mines?

A. Yes, sir.

Q. What type of equipment did you use there?

A. Well, we used Joy loader, shuttle cars and put in electric motors.

* * * * * * * * * *

1216 By Mr. Ables:

Q. Did your contract call for certain production, is that what it provided for?

A. Yes, sir.

Q. Do you recall what those terms were?

A. Twenty ton per man, the best I remember.

Q. And what was your results there, what kind of production did you receive?

A. Boy, that's a big question. I would think about 15 tons per man.

Q. All right, sir. Now, what type of a seam of coal is this up there on Daus?

A. It is very erratic, sometimes you will be in six-foot coal, sometimes you will be in two-foot coal and sometimes two inches.

Q. Now, what is the name of this seam?

A. I don't remember.

Q. Sewanee Seam?

A. Yes, it's the Sewanee Seam.

Q. Does that refresh your memory, sir? Is it the
1217 same seam we have got in the whole Southeast of Tennessee?

A. Same seam.

Q. All right. You say very erratic. What do you mean by that, would you just tell us?

A. Well, for instance, I drove one mines 900 feet and we never had over four inches of coal, it took the other mines to pay for that one.

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1226 CROSS EXAMINATION

By Mr. Rayson:

* * * * * * * * * *

1228 Q. Well, was there a total of $150,000 invested in the three mines?

A. Yes, sir.

Q. And did you have roughly $50,000 in each one, or explain that?

A. No. I'd say about a hundred in one, about 30 in the other, and then the outside equipment which ran up to about that.

Q. Which one did you have the 100 in?

A. That was Mines 204, I believe, 203 and 4.

Q. When you mechanized these mines, did you open new mines?

A. No, sir.

Q. You mechanized existing mines, is that it?

A. Yes, sir.

Q. Did you enter into some agreement with the union at that time concerning some construction?

A. No, we just carried on with the old contract.

* * * * * * * * * *

1229 Q. How did you come to decide to make this investment, Mr. Cates?

A. There was no question, we had to do it, in other words, we couldn't get a contract with TVA unless we mechanized, in other words, we had to agree to produce 20 tons per man.

Q. Now, when you are saying "we", are you talking about you and Mr. Miller?

A. I am talking about Tennessee Products, Incorporated.

Q. And did you undertake this mechanization at the suggestion of Tennessee Products?

A. Yes, sir, I sure did.

Q. Did Tennessee Products loan you the money?

A. Yes, sir, sure did.

Q. Did they loan it to you or did they loan it to Oak Coal Company?

A. They loaned it to Oak Coal Company.

1230 Q. In forming that corporation, what was its initial capitalization, $1,000?

A. I don't know, I'd have to check into that, I couldn't answer that.

Q. Was that about it?

A. I'd have to check into it.

Q. Well, do you have any recollection about it, can you approximate for us?

A. No, sir.

Q. Whether you had any substantial amount of money invested in this company?

A. No, sir.

Q. You don't know whether you had any substantial amount invested in the company?

A. For myself, yeah, I had these mines, already was making good money in these mines and I already had maybe 50 or $75,000 invested in the mines and was making money.

Q. You continued to use that equipment?

A. Yes, sir, that was part of it.

Q. But did the Tennessee Products loan you all of the other money?

A. No. We paid that back so much a ton.

Q. Well, did they loan you the money initially?

A. They bought the equipment, that's right.

Q. And you were paying for that equipment?

1231 A. By the ton.

Q. On a tonnage basis?

A. That's right.

Q. Did you have any personal liability for that $15,000 or was that the liability of the Oak Coal Company?

A. That was the liability of Oak Coal Company.

Q. All right. Do you recall how much of that $150,000 you paid off?

A. I'd have to go to my records and check that.

Q. You have no idea?

A. Sir?

Q. You have no recollection?

A. I paid about half of it, yes, sir.

Q. How were you paying that?

A. At 25 cents a ton.

Q. Did you actually write a check for this 25 cents?

A. We were running four to 500 tons.

Q. You were running 4500 tons a day?

A. Four to five.

Q. Four to 500 tons?

A. Yes.

Q. Was this 25 cents being withheld from your check?

A. Yes.

Q. By Tennessee Products?

A. It's in the records, if you want to check.

1232 Q. Were you paying them a royalty on this coal in addition to that?

A. Yes, sir.

Q. How much was that?

A. I believe it was 25 cents, if I am not mistaken.

Q. Could it have been more than that?

A. No, sir, about 25 cents.

Q. Was that also withheld?

A. Yes, sir.

Q. What other charges did you pay to Tennessee Products, if any?

A. Well, of course, the equipment and stuff you bought, stuff like that was deducted. In other words, if you were to buy a piece of equipment, well, they would pay for it and then deduct you on that, sometimes 20 cents, sometimes 10.

Q. Any services?

A. That varies. No, sir.

Q. What about your insurance?

A. I paid my own insurance for a while and then a while they paid it and deducted it. As long as Bituminous Casualty was there, well, we paid your own and then they changed over to this other and then they deducted it after that.

* * * * * * * * * *

1237 Q. And you searched him out at this time?

A. I hunted Howard Madewell up and signed the contract, that's right, I don't deny that.

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1238 REDIRECT EXAMINATION

By Mr. Ables:

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1240 Q. Yes, sir. And were you paying any welfare, Mr. Cates?

A. Yes, sir.

Q. How much welfare were you paying?

A. Ten cents.

Q. Ten cents welfare?

A. Um-hmm.

* * * * * * * * * *

1242 Mr. Combs: If the Court please, while counsel is getting his witness I have the citations that the Court asked for, if you would like them.

The Court: Yes.

Mr. Combs: These citations are in connection with the exhibits offered in the Pass affidavit or deposition. We make reference specifically to Section 20 of the Clayton Act, 29 USCA Section 52. This has to do with the statutory restriction of injunctive relief.

We call the Court's attention particularly to the last paragraph of that section, which says this, "Nor shall any

of the acts specified in this paragraph be considered or held to be violations of any law of the United States."

That goes slightly beyond the question of injunctive and restrictive relief.

We also make reference for the Court's attention to Section 2 of the Norris-LaGuardia Act, which is 29
1243 USCA, Section 102, which states the public policy in labor matters of the United States. We make reference to Section 4 of the Norris-LaGuardia Act, 29 USCA, Section 104, Paragraph C, that is, Subsection C of 104, which reads as follows:

"Paying or giving to, or withholding from, any person participating or interested in any labor dispute, any strike or unemployment benefits or insurance, or other monies or things of value."

We make reference to those particular sections in the Norris-LaGuardia Act.

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1244 Mr. Combs: Well, of course, the position, if the Court please, of the defendant here is that we have gone for two weeks, or are in the midst of the second week, without any proof whatsoever of any agreement between the union and any operator and, of course, we object as we go along on the evidence on the basis of what we think are proper objections and we make those objections now because as of now there is no connecting proof. There is no proof whatsoever of any kind or character in connection with an agreement with an employer group on the part of these defendants and we say that it is high time that the defendant, that the plaintiffs are at least offering some kind of proof *of* that character as a basis for introducing all of this evidence, which is just accumulative on and on and on.

I realize the Court has discretion and we don't argue that he doesn't on allowing the sequence of the evidence, but the time does come some time when we think that they have to get down to the question involved in this lawsuit,

not all of these trivial disputes, ups and downs on these situations down here when they have alleged it was a national conspiracy involving the entire National Bituminous Coal Wage Agreement and I think counsel has made reference a time or two that is one prong of the conspiracy,

but I think it is rather strange to prove the prong
1245 before you prove the conspiracy from which the prong emanates and we think that we are very much in order in objecting to this evidence and pointing out these authorities as it comes in.

Mr. Rowntree: I agree with counsel that it is perfectly proper to enter his objections. I have no objection to the entry of objections.

We are proceeding, your Honor, I might point out, I don't think the Court is advised along the line of the suggestion of the order of our proof, that we tendered to the defendant counsel as required in the order entered on last summer, that we give the defendants the order of our proof, and we are pursuing that line.

We will get to the proof about national conspiracy in the next phase and we intend to cover that before the trial is over.

The Court: All right.

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1262 VIRGIL C. THOMAS,

a witness called at the instance of the plaintiffs, being first duly affirmed, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Kelly:

Q. Would you please state your name, age, and place of residence?

A. Virgil C. Thomas; age fifty-three; residing in Lake City, Tennessee.

* * * * * * * * * *

1264 Q. In 1957 did you lease a coal-mining area from Tennessee Products and Chemical Corporation?

A. Yes, sir, I did.

Q. And how was this mine or lease identified, by name or number?

A. The first year of that lease or a little better was listed as RC 51.

Q. Was the name changed later?

A. The name was changed, that was changed later to Griffiths Creek No. 1.

Q. Was that abbreviated by GC No. 1?

A. Right.

Q. What type of mining operations did you put into effect under this lease?

A. We put in what we call the conveyor mining.

Q. Is that a mechanized operation?

A. Yes, sir, that's a chain-conveyor, mining with mobile loader, bridge conveyors.

Q. At that time, had Tennessee Products changed its practices with reference to the types of mines to be operated by its sublessees?

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1265 A. Yes, sir, these were going entirely as much as possible to mechanical mines.

Q. In your opinion, RC 1 or GC 1—

THE COURT: (Interposing) Is this Tennessee Products or Tennessee Consolidated?

MR. KELLY: Tennessee Products and Chemical Corporation, Your Honor.

The Court: All right.

By Mr. Kelly:

Q. How does it stand in order with reference to the mechanical mines opened and developed by a sublessee?

A. It was the first mines that they had of this type in the small mine area, that is, small mine operators.

Q. Soon thereafter and in the immediate vicinity of your

first mechanized mine, did they lease to others for opening up mechanized mines?

A. Yes, sir.

Q. And who was the next in order of time?

A. Marshall Meeks, or Meeks and Myers Coal Company.

Q. And where was that mine located with reference to your mine?

A. Just across the creek in the opposite mountain, about a stone's throw through from my opening.

Q. Then there was another mine then opened by another operator?

1266 A. Yes, sir, about 2,000 feet down on this same creek was one opened by Mutual Coal Company.

Q. And who were the men owning and operating Mutual Coal Company, if you know?

A. Mr. Max Condra, Mr. James Sains and Mr. Chester Brown.

Q. From the public highway how was your mine reached?

A. We had about 2 mile of road up what we call the gulf out on the mountain to the main highway, 108, that was a private-built road in there by Tennessee Products Company.

Q. And where was your mine located with reference to these other mines on this access road?

A. Mine was the first one.

Q. Were the other mines also served by an extension of this same access road?

A. Right.

Q. Mr. Thomas, you referred, I believe, to a conveyor-belt-type operation. Will you just please state generally to what extent you had mechanization in this mine?

A. You mean in regard to the—

Q. (Interposing) The types of machinery and the equipment and what processes, mechanical processes, were used?

A. We had what we call the short-wall cutting machines made by Goodman Manufacturing Company, had 8-

1267 1/2-foot cutting bars, which cut the coal 8-1/2 foot back, and then we would shoot that down, we would drill those holes with hand electric drills, shoot the coal down, and then it would be loaded up by a mobile loader, that's the Caterpillar-type traction loader that has the digging arms and the conveyor carrying it back which was attached behind the bridge conveyor, this bridge conveyor carried the coal onto a main, what we call the mother line chain conveyor, it rode on that with what we called the saddle or four dollies, and that gave us continuous loading from the face from the time it was shot down until it was cleaned out.

Q. Now, did your machinery and equipment from your experience from the Shook lands—or did you buy all of this to start out with?

A. We bought all of this to start out with at this particular mine.

Q. With a reasonable degree of accuracy, can you state the approximate amount of capital investment that was necessary to mechanize this mine?

A. The initial investment required about a hundred thousand dollars to start off.

Q. As the mine progressed and was driven and projected further under the mountain, was it necessary to make additional machinery and capital investments?

A. Yes, sir, each month we made up what we call setups, about every 30 days, that is, extended setups on
1268 further in the mountains as you advance, that required additional track-trolley wire, feeder lines, and so forth, as you went along and then, of course, you had, as you got further back, you had to have more other equipment to go along with that, such as haulage locomotives, mining cars and so forth.

Q. Now, your operation in this mine has been abandoned?

A. Right.

Q. Up until the time of the abandonment of the opera-

tions, approximately how much in the way of capital investment did you have in machinery and equipment and in cost of developing that mine?

A. Cost of development, which would be an approximate figure, but including—I have to explain here in the development cost, because I did drive an entry 3,000 feet, which was a narrow entry up the side of a creek and near a body of land owned by another company, which we couldn't mine, and that was workings that we couldn't reach out and mine rooms, we had what we call rooms, therefore, it was costly, so we had about $50,000 cost there of development and then, of course, the other equipment and all ran about another $150,000, which roughly would be in the neighborhood of $200,000 altogether.

1269 MR. COMBS: If the Court please, we are going to object to a continuation of this line of testimony. This man is not a plaintiff, and I don't see the relevancy of it. It's some background information with respect to investment and cost and description of this on a non-plaintiff, and I don't see the relevancy of it.

THE COURT: I am unable to pass upon your objection at this point. I will allow him to proceed further. I am unable to determine whether it would have any relevance or not or could have any relevance or not.

By Mr .Kelly:

Q. Mr. Thomas, during the time of your operations there, have you personally been in the Meeks and Myers' mine adjoining you?

A. Yes, sir, I have.

Q. Are you familiar in a general way with the type of mechanization they had in their mine?

A. Yes, sir.

Q. And how did it compare with your mechanized mine and your machinery and equipment?

A. It was a different type of equipment. These were in experimental mines, we would call them, for Tennessee

Products. I chose the conveyor type, they chose what we call the rubber-tired mobile type, which was instead of using chain conveyor they used the rubber-tired shuttle cars,

and this car was loaded then with the same type
1270 loader but with a long swing broom which loaded the coal into a car driven by an operator carrying it from the face of the place, working place, to the main entry hallway, and then it was discharged into the car.

Q. Was that a different type of mechanization?

A. Right.

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By Mr. Kelly:

Q. Is Marshall Meeks, who is one of the plaintiffs in this case, is he now the successor to Meeks and Myers?

A. Yes, sir.

1271 Q. Do you know or remember about when it was that Bill Myers withdrew from the operation and left it up to Marshall?

A. Approximately, I wouldn't know exactly.

* * * * * * * * * *

By Mr. Kelly:

Q. When you began the development of GC 1 did you sign the standard form UMW of A contract?

A. Yes, sir.

Q. At the time of signing, who did you deal with?

A. Mr. George Gilbert was the representative of the UMWA at that time.

Q. What statement did he make to you, if any, about the method that you were to pay wages and Welfare Fund contributions?

A. Well, we talked to Mr. Gilbert, showing him our problem that we were up against there in the new operation and told him that it might be a possibility that we would be a failure under this contract, it was rather strict, but he was very cooperative, and he said to go along and do the best you can and you and your men can work out your wage problem, well, go right ahead and you would have no trouble.

Q. What did he say about Welfare Fund contributions?

A. Well, we talked about that, and he says, "Just
1272 go along and do the best you can." And that's all he would say and didn't make any other remarks.

Q. Did he make any statement to you to report your tonnage and pay your Welfare?

A. No, sir, he didn't tell me, he didn't mention that.

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1274 By Mr. Kelly:

Q. Did or not you undertake to live up to the terms and provisions of the contract with reference to payment of the wage scale and contribution to Welfare Fund?

A. Yes, there was an exception there that the men and I agreed on the wage scale which was lower than the one provided for in this agreement.

Q. Did Mr. Gilbert know about that?

A. Yes, sir, Mr. Gilbert knew about it.

MR. COMBS: I object to that question, unless it is shown how Gilbert knew about it.

By Mr. Kelly:

Q. Would you tell how Gilbert knew about it?

A. Well, I talked to him at his home and told him our problems there, this was a new operation and we were having problems of making it pay out, and so he said, "Whatever you and your men agree on, that is up to you, if the men are satisfied, well, there will be no prob-
1275 lems."

Q. Now, what was your experience, overall experience, in your operations in the year 1959 from the standpoint of—first, strike that question, and let me ask what I should have asked—how does the mechanized mine operation compare with the hand-loading type mines you referred to from the standpoint of efficiency and production of coal?

A. The mechanized equipment is more efficient, because the competitive market is getting—market price of coal is getting lower all of the time, and we had to increase our

tons per man, you see, so actually the hand loading type of mine was just outdated, just like your horse and mule on the farm.

Q. All right. Now, what was your general overall experience in the mining and production of coal in the year 1957?

A. Well, we went along in this operation and developed this mine. We had a pretty hard go. We found the typical condition of the mine much worse than we expected when we got in under it at the mountain. We have in this seam of coal many pinches or squeezes, the coal pinches out and we have a lot of bad top areas and when you hit those you cannot produce coal like you would normally if your seam was regular, so we had that problem for quite a while.

We had no labor problem at all with our men at this particular mine.

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1277 MR. COMBS: (Interposing) If the Court please, we object to that line of questioning. We submit that what physical difficulties he had in his mine has nothing to do with this lawsuit. I think that the large—

THE COURT: (Interposing) What is the relevance?

MR. KELLY: May it please the Court—go ahead.

MR. ROWNTREE: If Your Honor please, we think it has an intense amount of bearing upon this lawsuit. Of course, they have consistently said in these bargaining sessions that, "We don't care what your conditions are. You sign the national contract."

We say that here is the topmost truck mine in the field who encounters these conditions. Can he abide by the national contract? This is the top mine in the field, the first experimental mine using the most advanced mechanism. It cannot abide by this national contract and this bears upon the later bargaining sessions when they not only wanted to apply it to this kind of mine but to all these other kind, the national contract, without regard whatsoever to

the conditions of this field and that is part of our lawsuit, that is our theory, that they must bargain according to the circumstances that they find in each bargaining unit
1278 without regard to some agreement that they have made in Washington with some other bargaining unit representing the major coal companies in the industry, and that is why we say it is material.

MR. COMBS: Of course, counsel to some extent, probably not intentionally, is testifying. This witness has not testified that he is the top operator in this field, and he is not testifying that he made a failure of his operations as such.

We submit that these details of mining operations in all of these non-plaintiffs has no relationship to this, they have got plaintiffs that they claim represent classes of operators here, and counsel is continuously alluding to the fact that the contract is signed in Washington and that the contract doesn't take into consideration local conditions, and I submit that that alone does not bring this under the Antitrust Act in any way. I think the Pennington decision, I think Allen Bradley, or any case that counsel can quote, very clearly says that the union has a right to adopt these policies if they are adopted unilaterally, and certainly the detailed testimony here of these continuous operations of mining equipment and all of that is not throwing any light that I can see, it has no tendency to prove either way whether or not the union combined with the large operators, as
1279 alleged in this complaint to monopolize the coal industry and to exclude the small operators.

Now, without getting extensive in my argument, counsel has shifted so many times from his position on what is going on in his theories. He first starts with a hand loading, they can't compete, then the mechanical mines takes the hand-loading business away from the hand-loading mines so they can't compete with the mechanized mines, and now he has got clients that are mechanized and they are recognized, now he says that they can't compete.

I don't know what he is going to come to next at all, and I submit that this detailed testimony of witnesses that are not plaintiffs on the type of mining operations, his physical setup over there, is not relative to this lawsuit.

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1281 MR. COMBS: Well, I think, and I have alluded and I wanted to allude to what Counsel Kelly said here, I think I have tried to make clear our contention that the Supreme Court of the United States in the Pennington case, and in Allen Bradley and Apex has made it crystal clear that what counsel has said is not a violation of the antitrust act, the fact that they may not be able to pay the wage scale in a uniform contract throughout the industry is not a violation of the antitrust act.

Now, secondly, the statement of Counsel Kelly in connection with the fact that they signed these standard agreements and they tried to live up to them and they couldn't and they went broke because of it, I don't know what they are trying to do, but each of their witnesses has testified that they have not lived up to that contract, that they agreed with the men on what wages they would pay, and this witness himself said just now, testified that he did not pay the wage scale.

Now, getting down to the Welfare Fund, I don't know what he is going to testify to about that, so I submit that there is a good deal of inconsistency in all that they
1282 are trying to do.

First, they are saying that they can't live under the contract and, secondly, they are putting witnesses on to prove, to testify to the fact that they did not pay the contract.

Now, they are trying to say that the union knew through the testimony repeatedly here that George Gilbert and Howard Madewell and some of the field workers have told them to do the best you can and that, therefore, they did

the best they could and they didn't pay the contract rate nor the Welfare Fund.

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MR. COMBS: (Interposing) Now, I submit, Your Honor, that this constant reiteration that certain types of mines and certain companies could not pay the wage scale or the Welfare Fund royalties provided in the National Coal Agreement that they signed is no evidence whatsoever of violating the Antitrust Act.

THE COURT: All right. Of course, these discussions are very helpful to the Court in understanding the theories of the parties and the legal positions of the parties.

I believe the Court should, however, be quite liberal in allowing the parties to prove their case or in introducing evidence into the case unless it appears to the Court
1283 quite clear that the evidence is not competent. I think I shall allow it, and we shall proceed with that in mind. I believe the objection should be overruled.

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1285 MR. COMBS: Of course, Your Honor, the theory as stated by counsel now and the theory as stated by us in our pre-trial is what guides this lawsuit and my objections are to this constant reiteration of the differences between the contract conditions in this field and other places and the constant reiteration that these people should be allowed a better contract, a privileged sanctuary, if you please, with all the different types of mining and all of that is what I was objecting to and going into detail about that.

Now, the theory of counsel that has just now been added, just on the tail end, if they could prove an express agreement on the part of the union and operators, an express agreement that they were to adopt certain measures to exclude certain groups from the coal industry, that's a different matter than what he has been constantly talking about here and testifying to.

* * * * * * * * * *

1289 Q. During the course of your entire operations from the beginning of 1957 did you make reports to the Welfare Fund as to the tonnage of coal that you had produced at each reporting interval?

A. Yes, sir, every ton mined we have a record of, every ton mined and it was reported regularly.

1290 Q. Were the tons reported accurate and true and correct?

A. Accurate and true, yes, sir.

Q. At each time did you pay the full 40 cents per ton Welfare?

A. No, sir.

Q. On each ton of coal every time?

A. No, sir, I wasn't able to pay it all.

Q. Did you keep in close contact by correspondence with the trustees of the Welfare Fund and keep them alerted and advised as to your conditions?

A. Yes, sir, I sure did.

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1291 By Mr. Kelly:

Q. At the end of the termination of your operations in this mine, did you still owe unpaid Welfare Fund contributions?

A. Yes, sir, I was still indebted to them.

Q. In what amount, Mr. Thomas?

A. I am not sure, it would have to be an approximate figure, it is roughly maybe $25,000.

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1305 CROSS EXAMINATION

By Mr. Rayson:

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1306 Q. Did I understand you to say that you used entirely different equipment in this mine than you had used in other mines you had?

A. No, sir. I used the same type of equipment but a larger capacity.

Q. Well, was it new equipment?

A. No, it wasn't new but it was real good used equipment.

1307 Q. You hadn't used this equipment that you used in GC 1 in your other mines? That is what I am trying to get at.

A. No, sir. That is right.

Q. Now, you opened this mine around the middle of '57, is that right?

A. Latter part.

Q. Later part. Now, whose suggestion was it that you use this particular kind of equipment?

A. It was my suggestion. Mr. Travis asked me about the experimental mines, what I would like to use. I told him the same type that I was using but a larger equipment which had larger capacity of mining coal.

Q. Did you make an investigation of other areas to see whether this larger type of equipment had been used?

A. Yes, sir.

Q. Successfully?

A. I went into the West Virginia area, yes, sir.

* * * * * * * * * *

1315 Q. Can you tell us what sort of royalty you were paying to Tennessee Products on this coal?

A. On the run of mine coal that went to TVA, I was paying a 60-cent royalty.

Q. Now, was that exclusive of some amount you may have been paying on your equipment?

A. Right.

Q. How much were you paying on your equipment?

A. Well, I made various sizes of payments, it was started out on the basis of 15 cents a ton, my first agreement with the bank, and my tonnage was so poor they were a little unhappy with that and so I had to increase it and I

1316 finally wound up paying 25 cents a ton on most of it and then just monthly payments, no tonnage at all.

Q. Were these monies withheld, the 60 cents and the 25 cents withheld from your coal earnings by Tennessee Products?

A. Not until the latter part, I mean the banks begin to get extremely worried, you see, and I paid, I made my monthly payments all of the time because the notes was in my name, you see, only secured by them, but in the latter days of this operation as the time went on, they, of course, conditions were bad, and they were beginning to get worried, so Tennessee Products did withhold for a while some money and sent it to them on the latter part.

Q. What about the 60 cents?

A. That was just a royalty.

Q. Did they withhold that under your system of doing business?

A. No. Well, sometimes they did, but I sold lots of coal outside. I was the only man that had the right there to sell coal, domestic coal, 2 inches up, which I sold to the public, and I paid—

Q. (Interposing) Did you sell that at the same royalty?

A. No, I got—I had to pay a dollar royalty.

Q. You mean Tennessee Products withheld one dollar on your domestic sales?

1317 A. No, they didn't withhold it, I mailed the check.

Q. Of course, you had mailed the check?

A. I mailed a check once a month, that was for the 2-inch up.

Q. But they were charging you a dollar for domestic coal or coal you sold on some arrangement other than their TVA contract?

A. Yes, sir.

Q. And 60 cents on their TVA coal?

A. Yes, sir.

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Testimony of Max Condra—Direct

MAX CONDRA,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Ables:

Q. Would you state your name, please, sir?

A. Max Condra.

Q. Mr. Condra, what is your place of residence?

A. Whitwell.

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1321 Q. Yes, sir. Now, during this period of time, did you develop interest outside of Reel's Cove in the mining industry?

A. Yes, sir.

Q. Let's see, what type of industry did you develop first?

A. We had a mule-operated mine on Daus Mountain.

Q. What was the name of that operation, sir?

A. Easy Coal Company.

MR. COMBS: I didn't hear the name.

MR. ABLES: Easy Coal Company.

Q. What year did you acquire an interest in Easy Coal Company?

1322 A. In the fall of '57.

Q. And how did you acquire that interest?

A. We bought out a man that was operating it, I don't remember his name, though.

Q. All right, sir. Did you later incorporate that business?

A. Yes, sir.

Q. And at the time you bought it, how was it being operated?

A. Hand loading, haulage by mule.

Q. Haulage by mule?

A. Yes, sir.

Q. How long did you maintain that type of operation at Daus?

A. Until June of '59.

Q. Now, in that year, June of '59, what did you do?

A. We changed to mechanized mining, we put in shuttle cars and joy cutting machine.

Q. On that occasion did you incorporate?

A. Yes, sir.

Q. What was the amount of capital you incorporated for and made in on that operation?

A. $12,000, I think.

Q. Was that your money and your other stockholders'?

A. Mine and my partners'.

1323 Q. Did you have some assistance from Tennessee Products in connection with the purchase of this equipment?

A. Yes, sir, we borrowed the money, we signed the notes as individuals, and they acted as surety as an incorporation.

Q. All right, sir. How much money did you borrow at that time to mechanize that mine?

A. $35,000.

Q. And how much money did you owe on that operation when the mine closed down, sir?

A. $16,000, approximately.

Q. Now, you switched over to mechanization up there, you say?

A. Yes, sir.

Q. Was there any reason to mechanize that mine?

A. Well, the Products contended that to get business that they were going to have to mechanize and in order to operate we went along with them.

Q. Now, this hand-loading operation you had, was it a financial success?

A. In a small way, yes.

Q. What was your penalties running on your coal on that occasion?

A. We were not being penalized under the hand loading.

Q. How many men did you have working for you
1324 in the hand-loaded mine?

A. Six to eight.

Q. Now, when you mechanized, how many men did you employ?

A. Well, we got to twelve or fourteen at one time, but our ash ran so high they had us to cut down.

Q. Well, now, do you recall with relation to the hand-loading mine the difference in the ash with hand loading and with the mechanical loading?

A. Really we didn't get any report from the hand loading because we were not being penalized, they would tell us that it would run from 8 to 10, 11 percent, but when we started mechanizing, it did get as high as 21. Now, I would say on an average of approximately 15 or 16 percent.

Q. What do you attribute to that difference?

A. We had a rash on the bottom that on hand loading we were able to leave it, heavy equipment would tend to break it up and get it mixed in with your coal.

Q. What is rash, Mr. Condra?

A. Well, I don't know if I can describe it or not, it's a black substance that looks and is similar to coal but it isn't and it doesn't analyze, it runs your ash content high in your coal.

Q. Did you have some other peculiarities in that seam up there?

1325 A. We had a very rugged condition, large coal, small coal, rolls, and it, in fact, it was an area that I wasn't accustomed to.

Q. You had worked mainly whereabouts?

A. At the old Whitwell mines and at Reel's Cove.

Q. How did it compare to the Whitwell area?

A. Well, it would be hard to compare, I mean, your difference was so much difference. In the Whitwell area you have hard bottom as a rule, hard top. Up there, well, you didn't, you had soft bottom and a lot of soft top.

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1329. Q. No. 3. Do you recall when you were given the opportunity to take property or lease that property from Tennessee Products?

A. Yes, sir, all of 1958.

Q. You had some preliminary discussions on that?

A. Yes, sir.

1330 Q. Later on did you meet with the local or did you meet with the Reel's Cove local or somebody?

A. Yes, sir, in approximately around the first of or around October, the latter part of September or October, Mr. Mosier, president of Local 8128 called me and asked me if I could get one or two of my partners and meet him on Sunday afternoon at the union hall and he would explain the proposal or demand that Reel's Cove local had on the GC area.

Q. Had this area been opened up that you were going to be assigned as a going concern or a going mine?

A. You mean?

Q. The area that Mutual eventually got a lease on?

A. No, sir.

Q. Was it brand new?

A. No, sir.

Q. After the course of these meetings at the union hall, may I inquire who was present?

A. I don't remember all of them, but I remember Hanzel Mosier, Robert Pickett, and Leonard Bowman and two or three others that I don't recall.

Q. Was any district representative present?

A. Not at that meeting, no, sir.

Q. All right. You had a preliminary meeting, I believe?

A. Yes, sir.

1331 Q. And did you reach any type of an agreement?

A. No, sir, they just told us what their demands were and we didn't agree to anything.

Q. At a later date did you have an opportunity to meet with them again with other people?

A. Yes, sir.

Q. May I ask when that occurred?

A. Sometime in December of '58 we met at the Tennessee Products supply house. There was Mr. Ridings, Mr. Pass, Mr. Madewell, Mosier, Pickett, and Bowman.

Q. Would you tell me who each of those individuals were?

A. Well, Mr. Ridings was president of District 19; Mr. Pass, secretary-treasurer; Mr. Madewell, District representative; Mr. Mosier, president of Local 8128; Pickett and Bowman were local committeemen.

Q. Are you sure that Mr. Madewell or Mr. Gilbert were there?

A. Mr. Madewell.

Q. All right, sir.

A. Wait just a minute. On that occasion it was Mr. Gilbert.

Q. Did you have a discussion at that occasion on that particular mine area?

A. Yes, sir.

1332 Q. Did Mr. Mosier and the union officials make any demands upon you in connection with the proposed locale of where you were to mine?

A. Yes, sir.

Q. What were those demands on that occasion?

A. They said that, or Mr. Mosier said that Reel's Cove local was contending that that was there work and what men employed in that area would be Reel's Cove men, and he said that they were asking that any mine owner or operator that took that mine would employ Reel's Cove men, he would start at the oldest man in seniority of Reel's Cove and offer him a job and come down through the employees of Reel's Cove and through the panel of the men that was cut off, in other words.

Q. Did you express your position on that occasion, Mr. Condra?

A. Yes, sir.

Q. What did you express to them?

A. After discussion and several times out and going over to the others we decided we would agree to work men from Reel's Cove or the panel provided we were given the right to pick them.

Q. Now, why did you insist on this right to pick men, sir?

A. Well, we were planning to put in mobile equipment, that very few men, if any, in that area was familiar
1333 with, and we needed to pick men that we thought were young enough and agile enough and mechanized, had enough mechanized ability to learn to operate it.

Q. What type of equipment did you have in mind, Mr. Condra?

A. Shuttle cars and Joy.

Q. Was any of that type of equipment in the area on that occasion being used in truck mines?

A. Yes, sir, I think Tommy Cates had one mine on Daus Mountain just starting.

Q. Did you make a trip away to look at this type of equipment?

A. Yes, sir.

Q. And there was a decision reached to use this type. You did purchase this type of equipment, I assume?

A. Yes, sir.

Q. Now, may I inquire at a later date, was there a memorandum or an agreement reached of some nature between Tennessee Products and other people involving this area?

A. Yes, sir.

Q. I will hand you a Thermofax copy of an instrument and ask you to identify it, sir.

A. That's the memorandum of understanding.

Q. Memorandum of understanding by whom, Mr. Condra?

1334 A. It was signed by the Tennessee Products and by Mr. Ridings of District 19 with the president of the Whitwell local and myself as supposed to be lessees of this No. 3 mine.

Q. Now, what is the date of that agreement, Mr. Condra?

A. January the 20th, 1959.

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1335 Q. Would you read the full agreement?

MR. COMBS: Rather than reading portions.

A. "January 20, 1959.

"Memorandum of Understanding.

"The purpose of this agreement is to clarify the employment of men working in Reel's Cove mine and the panel list at Reel's Cove mine at the following mines which are to be leased by Tennessee Products and Chemical Corporation to:

"1. Marshall Meeks.

1336 "2. Max Condra.

"3. Not leased as of this date.

"4. Mines opened by Tennessee Products and Chemical Corporation.

"1. Due to the fact that Marshall Meeks already has employed men to work in this mine, it is agreed that any additional men employed to work at this mine will be hired from Reel's Cove working men or men on panel list. It is agreed that Marshall Meeks will furnish a list of names of men he has employed which is not to exceed twenty (20) men. In the event this mine employs a man or men from within the working force of the Reel's Cove mine, then the Tennessee Products and Chemical Corporation will replace the man or men from the panel list according to seniority understanding now in effect at Reel's Cove.

"2. It is agreed that Max Condra will employ all men to work in his mine from either within work force of Reel's Cove mine or panel list. If employed from within working

force, then Tennessee Products and Chemical Corporation will replace him from panel list according to seniority understanding now in effect at Reel's Cove mine.

"3. This third mine has not been leased to anyone as of this date. When and if this mine is leased and it should be leased to a person or persons outside of this area, the men employed to work in it will be hired in the same
1337 manner as men employed to work at Max Condra mine. If leased to a person or persons in this area who has men employed, then the same arrangements as in effect at Marshall Meeks' mine will apply. A list of names will be furnished which will not exceed fifteen (15) men. If men are employed from within work force of Reel's Cove mine, then Tennessee Products and Chemical Corporation will replace him or them from panel list of Reel's Cove mine according to seniority understanding now in effect at Reel's Cove mine.

"4. Any and all men employed in mines operated by the Tennessee Products and Chemical Corporation will be hired from within Reel's Cove work force or panel list. If hired from within work force, then Tennessee Products and Chemical Corporation will replace man or men from Reel's Cove panel list according to seniority understanding now in effect.

"It is understood this agreement only applies to the property at Griffiths Creek and does not include Victoria, Daus, and Pocket areas.

"In the event any man chooses to go to work from within Reel's Cove mine or panel list to either of the above-stated mines, his seniority will only be at the mine he goes to work at. He cannot roll or bump any man at any other *man*. However, it is agreed that should the new Tennessee Products and Chemical Corporation mine employ all men at Reel's Cove mine and the panel list at that mine
1338 and then need additional men, that the hiring of men that may be on a panel list at the above-stated mines

will be discussed at that time before new men are employed.

"A construction rate of $1.50 and $1.75 for common labor and skilled labor will apply in the construction of tipple and drift mouth at these mines. The lowest inside day rate will apply beginning when coal is first produced, then at the end of seventy-five (75) feet the UMWA contract will be placed in full force and effect."

And then it is signed.

Q. Who all signed that agreement, Mr. Condra?

A. If I remember, I think I do, Mr. Ridings, Mr. Mosier of the local, I am positive of those two, it was signed by Mr. Travis, Marshall Meeks and myself.

Q. Marshall Meeks was a party to that agreement?

A. He signed it, he wasn't in any meeting that I was.

Q. But he did sign a copy of it?

A. Yes, sir.

Q. I will ask you, sir, after the signing of that agreement, when did you receive a lease from Tennessee Products and Chemical Corporation?

A. I believe it was June of '59.

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1353 CROSS EXAMINATION

By Mr. Rayson:

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1358 Q. And did you pay the vacation pay to the employees one summer?

1359 A. We paid it in '61.

Q. You failed to pay it one summer, I believe, didn't you?

A. Yes, sir.

Q. In fact, that was one of the reasons that you had a work stoppage at your mine, wasn't it?

A. That's right.

Q. That was one of those that you have already referred to in your testimony?

A. Yes, sir.

Q. Did you finally pay that?

A. Yes, sir.

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1389 MURPHY WHITED, JR.

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Cameron:

Q. Sir, would you please state your name, age and residence?

A. Murphy Whited, Jr.; Route 3, Whitwell, Tennessee.

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1399 CROSS EXAMINATION

By Mr. Owens:

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1403 Q. And who had you been working for prior to that time?

A. Prior to that I had worked for Mr. Earl Patten, Daus Mountain, in a semi-mechanical mine.

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1631 Mr. Combs: Of course, I would like to point out in connection with the statement of counsel that Mr. Justice Goldberg asked counsel, while he was arguing the case, that if the union had made a contract with the smaller group that he was representing at a scale below what they were offering the Pittston group and the other groups of that character and agreed with the smaller groups that they would keep that differential could he state in effect that they would be in the same kettle of fish as alleged by counsel.

So it's one of those situations and I think counsel is capable of stating his own reply because he thought, well, perhaps it wouldn't be as bad to make such an agreement with

the little operators as it would to make one with the
1632 big operators, so I am just merely pointing out while we go along our position on this for the clarification of the Court on his contention which I think boils down to the simple fact that his clients should be given a wage scale offered a wage scale and at the same time that the union make sure a wage scale higher than that was offered to their competitor in order that his smaller group could stay in business. I think it boils down in essence to that simple proposition and I think the courts have held repeatedly that the union doesn't have to gear its wage policies to the ability of the smallest unit.

Mr. Rowntree: I think my reply to Mr. Justice Goldberg was to this effect, that if the union on the record conspired with the smaller groups to favor those groups over the larger companies in a competitive restraint of trade purpose that they would be liable, but I stated to Mr. Justice Goldberg that I didn't think that the jury would ever convict the union in that sort of situation.

Mr. Combs: That is exactly the point, it was a sectional argument and an argument that the little against the big and I submit it has no legal significance in an antitrust case of this kind where the union has a right to bargain on a proposition as stated by the Court in Justice Black's opinion.

Mr. Rowntree: Of course, our statement was to
1633 the effect and the Supreme Court, the majority sustained this proposition, that if a union conspire with any business group, even a collective bargaining agreement, to restrain the trade of another union, even though the union's part be only to impose wage rates, that that is a violation of the Antitrust Law and the precise language of Justice White is that the surrounding circumstances have to be taken into consideration in the situation because an International Union, representing the great majority of employees in a basic industry, has tremendous responsi-

bility in our national economic life and the effect of a misuse of that can be disastrous for the country as a whole, to say nothing of hundreds of communities that are dependent on that industry. This responsibility must be conducted in such a way that the union can defend itself against such charges and if they take a course under which they find it difficult to defend their position under this heavy responsibility, that responsibility requires that they stand the consequences because of this tremendous power that they wield.

Mr. Combs: I just wonder, I don't want to prolong this, but I just wonder if counsel in his argument here that this union doesn't have a right to adopt at its convention and its internal setup a policy of asking for a uniform minimum wage scale throughout the coal industry, I am wondering if counsel is arguing that they do not have a right to do that.

1634 Mr. Rowntree: They have the right to do that and they have the responsibility which goes with that.

MR. COMBS: Exactly, I think they accept that responsibility.

MR. ROWNTREE: And if their conduct is surrounded with certain activities which indicate that this responsibility, this power, is being used in conspiracy with certain segments of the industry as opposed to other segments, then they must stand the consequences of a Sherman Act case.

MR. COMBS: Of course, the last statement of counsel is the crux of this case, is whether or not they did conspire with an employer group and counsel so far hasn't offered any evidence on that.

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1694 MR. ROWNTREE: We go to the deposition of Mr. Cyrus S. Eaton, taken in Cleveland, Ohio, November 11, 1960.

MR. COMBS: What page?

MR. ROWNTREE: This is 556.

Deposition of Cyrus S. Eaton—Direct

CYRUS S. EATON

DIRECT EXAMINATION

"Q. What is your name, sir?

"A. Cyrus S. Eaton.

"Q. Where do you live, Mr. Eaton?

"A. Northfield, Ohio.

"Q. Is that near Cleveland?

"A. That's outside of Cleveland, Ohio.

"Q. Have you always resided in Cleveland or thereabouts?

"A. No, for only 60 years.

"Q. You are Chairman of the Board of Chesapeake and Ohio Railway Company?

"A. Yes.

"Q. And you have other business interests besides the railroad?

"A. Yes.

"Q. I believe that you are Chairman of the Board
1695 of Steep Rock Iron Mines?

"A. Yes.

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"Q. West Kentucky Coal Company?

"A. Yes.

* * * * * * * * * *

"Q. And the Nashville Coal Company?

"A. Yes.

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1730 "Q. Well, isn't it true, Mr. Eaton, that the United Mine Workers has many millions of dollars invested secured by this West Kentucky Coal Company stock?

"A. That's right.

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1731 "Q. If such a loan had been secured by a pledge of union assets, and in the light of these other numerous transactions relating to West Kentucky Coal Company stock, is it not true, Mr. Eaton, that the policies of the

union would be abided by by the management of West Kentucky Coal Company?

"A. Not at all.

"Q. You mean that the management of West Kentucky Coal Company would pay no attention whatsoever to suggestions or instructions from the United Mine Workers of America?

"A. They have never offered anything. That would be a question that would arise if any suggestion were made.

"Q. You don't know about the intimate details of the management of the West Kentucky Coal Company?

"A. Yes, I do.

"Q. You are not familiar with all the transactions that West Kentucky Coal Company has had with the United Mine Workers of America?

1732 "A. Well, I suppose in a sense that is true, because they have frequent contacts between the active management and the union relating to ordinary questions that arise between management and labor unions. Those are handled under Mr. Easton's direction, who is on the job. But I am familiar with the financial position of West Kentucky, and with its bank loans and who has participated in them.

"Q. And the United Mine Workers of America have made no suggestions nor stated any proposed policies with respect to West Kentucky Coal Company, even though it has all of these funds invested in that company?

"A. That's right.

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MR. ROWNTREE: The next is the deposition of Mark Eastin, taken at the offices of West Kentucky Coal
1733 Company, Madisonville, Kentucky, October 13, 1960.

MARK EASTIN

DIRECT EXAMINATION

"Q. Mr. Eastin, where do you reside?

"A. 134 Union Street, Madisonville, Kentucky.

"Q. That is more than 100 miles from Knoxville, Tennessee?

"A. Well, about 300, I think.

"Q. What is your official position?

"A. President of the company and I am a director of the company.

"Q. And how long have you held each of those positions?

"A. Well, I was elected president of the company on March 16, 1956, and was elected a director before that, which December 11, 1951.

"Q. Mr. Eastin, do you recall what was the first date that West Kentucky Coal Company signed the National Bituminous Coal Wage Agreement with the United Mine Workers?

"A. March, 1954; March 1, 1954.

"Q. Has West Kentucky Coal Company been a signatory to the National Bituminous Coal Wage Agreement since that time?

"A. Yes.

"Q. Continuously?

1734 "A. Yes.

"Q. Do you sign for the company one contract with the union or do you sign one for each of the mines?

"A. Well, Mr. Love, who is now deceased, who was president of the company, signed the first contract and that was signed by the West Kentucky Coal Company. I later signed a contract; that was at the time of extension of this contract when a new contract was negotiated; for all companies. We now are members—for all mines I should have said instead of companies. We are now members of the West Kentucky Coal Producers Association, which is a local coal operators association here, and they signed for us the last time."

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1735 (Thereupon, the reading of the deposition was continued.)

"Q. Does Nashville Coal Company, Inc., also sign a contract with the union?

"A. Yes, we sign Nashville Coal Company to a contract.

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"Q. When did West Kentucky Coal Company acquire the stock, the common stock, of Nashville Coal Company, Inc.?

"A. Well, they actually acquired the stock in Nash-
1736 ville Coal Company and then we organized Inc. to hold it. Isn't that right?"

MR. ROWNTREE: "BY MR. WHEELER: No, sir. May I tell him?

"BY MR. ROWNTREE: Yes, sir.

"BY MR. WHEELER: The West Kentucky Coal Company organized Nashville Coal Company, Inc., a subsidiary, a Kentucky corporation, which acquired all of the capital stock of Nashville Coal Company and thereafter dissolved Nashville Coal Company.

"A. That is what I said or what I thought I said. Those negotiations were terminated or concluded, or completed I should say, completed on the 13th of September, 1955, and we took over the properties on October 1, 1955.

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1739 "Q. I show you, Mr. Eastin, a copy of West Kentucky Coal Company notice of annual meeting of stockholders and proxy statement, pertaining to the annual meeting of stockholders, May 12, 1959, and ask you if that is a copy of those statements?

"A. That is correct."

MR. ROWNTREE: In connection with the last exhibit, this proxy statement on Page 6, common stock outstanding, 857,264. Also reading from that proxy statement:

"'The outstanding voting securities of the com-
1740 pany consists of 50,000 shares of 5 1/2 per cent cumulative preferred stock and 857,264 shares of common stock, par value $4 per share, each of which shares is entitled to one vote. Holders of preferred and common

stock of the company of record at the close of business on April 21, 1959, will be entitled to vote at the meeting.'

"The officers, the directors of the company begin on Page 2 and their proportionate holding.

"Hugh B. Baker, 1,000 shares.

"William R. Daley, 1,000 shares.

"Mark E. Eastin, Jr., President of the company, 100 shares.

"Cyrus S. Eaton, 87,600 shares.

"Cyrus S. Eaton, Jr., 1,000 shares.

"R. L. Kaiser, 100 shares.

"Fay A. LeFevre, 1,000 shares.

"There are notes after the name, of Mr. Eaton.

" 'Note (a). Represents 10.22 per cent of the company's common stock; Mr. Eaton also owns of record, but not beneficially 27,142 shares, or 3.17 of the company's common stock.'

"There are notes after the names of Mr. Daley, Mr. Eaton, Mr. Eaton, Jr., Mr. Kaiser and Mr. LeFevre to this effect:

" '(b) In addition, Chertsey Corporation, which 1741 under the proxy regulations of the Securities and Exchange Commission is an associate of Messrs. Eaton, Eaton, Jr., Kaiser and LeFevre, own, respectively, 84,912 shares and 59,928 shares of the company's common stock; Otis and Company, which under the aforementioned regulations is an associate of Messrs. Daley and Kaiser, own of record, but not beneficially, 50,000 shares of the company's 5 1/2 per cent cumulative preferred stock, being all the issued and outstanding preferred stock of the company."

"One last paragraph here, there footnotes after the names of these board of directors, Eaton, Eaton, Jr., Kaiser and LeFevre:

" '(c) In addition, Chertsey Corporation, as aforementioned associate of Messrs. Eaton, Eaton, Jr., Kaiser and LeFevre, hold 25,000 shares, Sagamore-Summitt Company

and Tower Industries, Inc., as aforementioned associates of Messrs. Eaton, Jr., Kaiser and LeFevre, holders of 10,000 shares each, own all the issued and outstanding preferred stock of Nashville Coal, Inc., a subsidiary.'

"Q. And what is contained in here is true, of course?

"A. It was true to the best of our knowledge at the time. Now, the information in there is furnished, part of the information, by the directors and there is a slight inconsistency in the record. I don't believe it has any consequence. If you would like to know what it is, I can
1742 outline it for you.

"Q. Go ahead and explain it.

"A. Well, Cyrus Eaton, Fay A. LeFevre and R. L. Kaiser reported preferred stock of Nashville Coal Company owned by their associates as follows, that was Chertsey Corporation 25,000 shares; Sagamore-Summitt Company 10,000 shares; Tower Industries Inc., 10,000 shares. The stock records show"—

MR. ROWNTREE: There was an interruption.

MR. COMBS: I object. I don't think the explanation is very pertinent there, it doesn't show up and make any sense.

MR. ROWNTREE: I think you are entirely correct. That explanation he was about to make there is immaterial.

MR. COMBS: I think that explanation should be stricken because it doesn't make any sense.

MR. ROWNTREE: I agree.

(The reading of the deposition was continued.)

"Q. Mr. Eastin, you have referred to this Nashville Coal, Inc., preferred stock. Is that voting stock or not?

"A. Yes, it is voting stock.

"Q. Do you know whether or not the voting rules of Nashville Coal, Inc., require for a resolution to be adopted that it requires the majority vote of both classes of stock, preferred and common?

1743 "A. Not offhand, no, I don't know.

"Q. You don't know?"

MR. ROWNTREE: "MR. WHEELER: There is no such requirement.

"A. Let that be my answer then; there is no such requirement.

"Q. All right. Do you know how many shares of common stock are outstanding of Nashville Coal, Inc.?

"A. Of common stock, we have 262,500 shares of Nashville common outstanding.

"Q. And who owns those shares?

"A. Well, let's see."

MR. ROWNTREE: "MR. WHEELER: West Kentucky Coal Company.

"A. Well, of course, I was thinking about the preferred.

"Q. I should have pointed out the distinction there."

MR. ROWNTREE: "MR. WHEELER: I might say, Mr. Rowntree, that under the existing law of Kentucky, it is not necessary for a director to own stock as formerly was required."

MR. COMBS: Pardon me, Counsel, I might explain to the Court that Mr. Wheeler was personal counsel to Mr. Eastin, Mr. Eastin being a witness and not a party.

MR. ROWNTREE: We also say he is counsel for
1744 West Kentucky Coal Company.

MR. COMBS: Yes.

(The reading of the deposition was continued.)

"Q. Now, the common stock of West Kentucky Coal Company, the common stock is subject to two mortgages, I believe; one to Mr. Potter and one to Irvin Trust Company as trustee and the Liberty Bank of Louisville.

"A. That is substantially correct, yes."

MR. ROWNTREE: "MR. WHEELER: The question and the answer are not exactly accurate in this; that the assets of West Kentucky Coal Company are converted by the mortgage you refer to under which Irvin Trust Company of New York and Liberty Bank and Trust Company of Louisville are trustees .

"A. You can let that be my answer if you will accept it.

"Q. Now, the annual report for 1958 of West Kentucky Coal Company, Exhibit 1, recites, just so that we can get the clearest picture, and I will ask you if this is not so, Exhibit 1 on the last page in the first full paragraph at the top of the page under Note A in the left-hand column:

"'Mortgage notes payable (principal amount of $6,436,-025) of Nashville Coal, Inc., are secured in part by real and chattel mortgages on properties of Nashville Coal, Inc., and by pledge by the parent company of the outstanding common stock of Nashville Coal, Inc.

1745 "That statement is true, I believe?

"A. To the best of my knowledge it is.

"Q. Does that represent a transaction related to the purchase of the company by West Kentucky?

"A. Yes.

"Q. And so Mr. Jett Potter is the obligee on the obligation referred to there?

"A. That is right; he and his associates.

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1767 CROSS EXAMINATION

(Thereupon, Mr. Combs read the questions and Mr. Chambliss the answers.)

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1770 "Q. From your early days of operation, West Kentucky has been mechanized to some extent, has it not?

"A. Oh, yes; yes.

"Q. And as mechanization has improved in the mining field or mining industry, you people have tried to keep step with it, have you not?

"A. Well, certainly. If you are going to stay competitive, you have got to.

"Q. And, of course, as you have already indicated that was taking place long before 1950?

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Deposition of Merle C. Kelce—Direct

1772 "Q. That is near enough for my purpose. Going back over the years, have there been more men employed in the years gone by and, if so, what about the maximum number and about when? Just approximation?

"A. Well, before mechanization was generally adopted the coal was loaded by hand, and we have over 5,000 men working in our mines.

"Q. Has that number gradually reduced as mechanization has gone forward?

"A. That is true.

"Q. When were all of your mines mechanized, or your entire operation mechanized, about what year?

"A. I would say that we were, and I can get this definitely, if you want it, but I would say that our mechanization program had been pretty well completed by 1943 or '4: the transition has been completed by that time.

"Q. Prior to that it had been gradual over a period of years?

"A. That is right.

"Q. Of course, since that time mechanization has changed as new mining equipment has been developed?

"A. That is correct.

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1876 MR. ROWNTREE: Yes, your Honor. Next is the deposition of Mr. Merle C. Kelce. This deposition was taken at St. Louis on the same day as the preceding deposition, which was October 20, 1960.

THE COURT: How do you spell the last name?

MR. ROWNTREE: (Spelling) K-e-l-c-e, your Honor. Merle C. Kelce.

(Thereupon, Mr. Rowntree read the questions and Mr. Walker the answers.)

DIRECT EXAMINATION

"Q. What is your name, sir?

"A. Merle C. Kelce. (Spelling) K-e-l-c-e.

"Q. What is your residence, Mr. Kelce?

"A. St. Louis.

"Q. What is your present position?

"A. President and chief executive officer.

"Q. Peabody Coal Company?

"A. Yes, Peabody Coal Company.

1877 "Q. How long have you held that position, Mr. Kelce?

"A. Since 1957.

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1902 CROSS EXAMINATION

(Thereupon, Mr. Combs read the questions and Mr. Ables the answers.)

"Q. Mr. Kelce, talking about mechanization, do you know how long Peabody has operated mechanized mines?

"A. Mr. Kramer, I was with the Sinclair Coal Company up until July of 1955. I can only speak from 1955.

"Q. When you came with Peabody in '55, were they

1903 operating mines largely mechanized?

"A. Yes.

"Q. You had been with the coal industry for a good many years, and from general knowledge, can you tell us whether Peabody had been mechanized for many years prior thereto?

"A. Yes, they had been.

"Q. I will ask you if Peabody hasn't for something like a quarter of a century been one of the outstanding mines or branches in the mining industry in the mechanization of mines, it has been so recognized in the industry?

"A. I think that's true.

"Q. And hasn't Peabody had the reputation even before you came with it, and isn't it true, as a matter of fact, you have tried to keep up with the most modern mechanization process concerning the size of seams geographically, typographically at the place where you are operating?

"A. We have.

"Q. And you are continuing that policy today by even going into larger mechanized equipment?

"A. That's the reason we are developing this 115 yard shovel.

"Q. Has there, to your knowledge, in recent years, especially since you were connected with Peabody, but even going back years prior thereto, been any change so far as
1904 you know of policy with reference to operating the most modern means they can?

"A. I didn't understand.

"Q. Has there been any policy?

"A. Since I came into the picture?

"Q. Yes.

"A. Not that I know of, no.

"Q. You have operated, and you are today, from your general knowledge before you came with Peabody, they have operated largely on the surface or strip mining?

"A. The Peabody Coal Company has all been underground.

"Q. Until when?

"A. Until they acquired Sinclair's properties in July, 1955.

"Q. Since then what have you been doing?

"A. Most of it is stripping operations.

"Q. Today you have only one deep mine?

"A. That's correct.

"Q. Was that deep mine in operation in 1955 and '56?

"A. Yes.

"Q. How about its capital compared with 1955 and 1956 as of today?

"A. It's producing more coal today per shift than it did in 1955.

1905 "Q. And in answer to Mr. Rowntree's question, you told us something about the more modern mechanization of your strip mines. What about the deep mining in this one mine you still operate?

"A. There has been improvements.

"Q. Was it a mechanized mine in '55?

"A. Yes.

"Q. Was it at that time what you would consider modernly mechanized?

"A. It was a highly mechanized mine.

"Q. From your knowledge of that mine and the industry, had it been mechanized for many years?

"A. It's a fairly new mine. It's probably 12, 13 years old, but it has been a highly mechanized mine.

"Q. During the 12 or 13 years of operation, has it been a highly mechanized mine?

"A. That's correct.

"Q. Why does Peabody go in for mechanization?

"A. It's the only way we can live and compete with other fuels.

"Q. Explain what you mean by that, will you, please?

"A. Compete with the gas and oil that we have to compete with in this section of the country.

* * * * * * * * * *

1906 "Q. Let me get at it a different way. Does modern mechanization either underground or on the surface permit you to operate with less man hours per tonnage than the old methods?

"A. Yes.

"Has mechanization improved over the last quarter of a century, that has been true, is that correct?

"A. That's correct.

"Q. There has been a gradual reduction in the number of man hours per ton of coal produced as mechanization has increased and improved during the last 25 years?

"A. Yes.

"Q. What new fuels has coal had to compete with in the last quarter of a century, and I mean by that what fuels have grown in use as coal had to meet its growth to maintain its market?

"A. In the middle west where we operate, gas mostly.

"Q. In order to compete with gas as a fuel, it's been necessary for you to be able to produce coal at a lower cost?

"A. That's correct.

"Q. Has the production of coal or the use of coal as a fuel had any effect on the amount of coal that is consumed?

"A. Yes, to a certain extent. Not as much as gas. 1907 however.

"Q. What is the principal market for coal today, what type of industry or use?

"A. On our coal it's the public utility industry.

"Q. I take it you intend by an answer made earlier this afternoon to a question by Mr. Rowntree to state you did not know just when Peabody entered into its first collective bargaining agreement with United Mine Workers of America?

"A. You confuse me there; Peabody? See, I was with the Sinclair Coal Company prior to 1955.

"And I understood you told Mr. Rowntree when you came with Peabody in '55, there was already in existence between Peabody and United Mine Workers of America a collective bargaining agreement?

"A. That's right.

"Q. When they first entered into a collective bargaining agreement, and by 'they', I mean United Mine Workers and Peabody, you do not know?

"A. I don't know.

"Q. Since you have been connected with Peabody, Peabody negotiations for the collective bargaining agreement. I understood from your answer awhile ago, was handled largely by a coal association which Peabody is a member?

"A. That's correct.

"Q. What is the association to which Peabody be- 1908 longs?

"A. There are several of them, Illinois Coal Operators' Association, Ohio Coal Association, Southwestern

Coal Association, I think the Kentucky Coal Agency, they call the one in Western Kentucky.

"Q. I take it you companies that belong to these associations, and for which companies the companies do the negotiating on the bargaining agreement, instruct your negotiators to get the best contract they can out of the United Mine Workers?

"A. I am sure that's true.

"Q. At least that's what you want to get?

"A. That's what we are supposed to have.

"Q. You have not personally participated in any negotiations?

"A. No, I haven't.

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1909 "Q. Has it been your purpose in the mechanization of mines of Peabody since you have been connected with it and further improvement, such mechanization to freeze out the little fellow?

"A. No.

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1945 MR. COMBS: Is counsel offering this as an exhibit?

MR. ROWNTREE: Yes, we offer it at this time.

MR. COMBS: We object to it, your Honor. This is a report on unemployment statistics in Tennessee, and we do not think that it is relevant. We do not object to the authenticity in the form in which it is introduced, we have a stipulation on that matter, but we do object to the introduction of this document as to its materiality and its relevancy.

The question of unemployment is one that we could go into, it has been bothering the economy of this country ever since I can remember and the question of unemployment certainly has related to the Anti-Trust Act is not germane, I don't think. This can lead into a situation where

1946 we may be required to put in employment statistics

all over the country on steel, automobiles, railroads what-not in Tennessee and in the national economy and we object to it on that ground because we don't think it is relevant or material.

MR. ROWNTREE: If your Honor please, we think it is material on two main aspects. One is this is certainly one of the hard facts of life involved in the surrounding circumstances of the union's maintenance of the national contract in this field, and it is one of the principal facts that we think should have been taken into consideration by the union, and the union's failure to modify its national contract in the fact of this hard fact of life among others.

It has strong bearing on their purposes and the character of their activities with respect to our claim that they were pursuing an agreement with the bituminous coal operators association, major coal companies, to push this field out of existence, to push the men and the companies out of the industry and this is a circumstance surrounding the bargaining that was going on in this field through this period of time.

MR. COMBS: Of course, your Honor, our position is that this runs directly to the proposition in the Hutcheson case and in the Pennington case as to whether it is
1947 wise to pursue a policy whereby the union would try to keep in the industry as many possible workers as they could by agreeing to wages and hours that would enable certain groups to compete with other groups and we think that it runs into the question that counsel is talking about of wisdom or the unwisdom of it. Perhaps the union was unwise in not trying to adapt itself to the regional market, but that's not a violation of the Anti-Trust Act and I submit to counsel that he has talked about the obligations of the union in so many instances and I think that the union would be very happy, probably more happy than any other group in the economy, if we would solve this unemployment problem and counsel's argument that if they had done other-

wise in the bargaining relationship they might not have had the unemployment, this would be very interesting to the other basic industries. We submit that is going to the very heart of whether or not the Courts are going to sit and determine whether or not the union is wise in its bargaining relationships.

MR. ROWNTREE: We think that the UMW has not been too happy to put these people back on the employment rolls. They haven't been put back, if certain contracts, or yet a certain type of contract could have been made in this field which would have enabled them to be employed, but in spite of the drastic circumstances revealed in this report the union made no change in its bargaining in its con-
1948 tract with respect to the operators in this field and this occurs at a time when efforts to enforce the national contract in this field were first beginning to take effect. It deals with the year 1957, which ties in with the proof that it was in 1957 that the old contracts began to run out and the withholding of Welfare Fund money under those authorizations began to take effect on the bidding in early 1957 and late '56, and immediately thereafter this whole field was thrown into a desperate state of unemployment, as shown in this report, and in spite of that there was no change in the national contract terms for this field.

We believe that this must be taken into consideration in determining whether or not the union was pursuing a national agreement with the bituminous coal operators association, the big coal company, regardless of its effect on its local members and the trade being carried on here and we can—I just submit that this is a circumstance that should have been taken into consideration and must be taken into consideration in judging the union's conduct through the various meetings that will be shown here later on in the proof, trying to negotiate a contract based on some method of productivity or otherwise that would enable this field to exist.

Proceedings

THE COURT: Well, without attempting at this time to determine what, if any, weight this testimony might
1949 be entitled to, I believe I will allow you to place it into the record.

MR. COMBS: May I make one comment?

THE COURT: Yes.

MR. COMBS: I think this is the crux of this case here. I would like to read into the record at this time Mr. Justice White's opinion in the Pennington case, footnote two, which I am sure the Court is familiar with, but I would like to have it go into the record at this time to show our position on this particular matter that counsel is talking about.

Footnote 2 reads as follows from the Pennington case:

"Unilaterally, and without agreement with any employer group to do so, a union may adopt a uniform wage policy and seek vigorously to implement it, even though it may suspect that some suppliers cannot effectively compete if they are required to pay the wage scale demanded by the union. The union need not gear its wage demands to those which the weakest units in the industry can afford to pay. Such union conduct is not alone sufficient evidence to maintain a union-employer conspiracy charge under the Sherman Act. There must be additional and direct or indirect evidence of the conspiracy. There was, of course, other evidence in this case, but we indicate no opinion as to its
1950 sufficiency."

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1959 MR. COMBS: We object to that, your Honor, as being immaterial and move to strike it. It is a plea to Congress for some kind of relief. We think that it is in the nature of a petition to Congress.

MR. ROWNTREE: I file it on the same basis as we offered the unemployment figures showing notice to the union of conditions confronting this section of the country in the bituminous coal fields here in East Tennessee to judge the character of the union's conduct in the negotiating ses-

sions that were held here to attempt to work out a contract.

THE COURT: Overrule the objection.

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1960 MR. ROWNTREE: I might state that this is 1124 and we desire to read in a portion of Mr. Lewis' testimony at the trial, at the bottom of 1124, direct testimony.

JOHN L. LEWIS

DIRECT EXAMINATION

"Q. Mr. Lewis, there is something said in this record about—that the United Mine Workers of America made some loans to Mr. Cyrus Eaton, and that he used it to buy some stock, perhaps he or some of his companies, in West Kentucky Coal Corporation.

"Would you comment on it, please?

"A. Yes. Mr. Eaton was a man of acknowledged industrial success and one of the leaders in the financial and industrial world of the country whom I had known for a long time, and we invited him to make a joint venture with us in the West Kentucky purchase of stock, and we loaned him some money to buy stock. We took the stock as security, and that is the arrangement that was worked out.

"Q. Something has been said here with reference to those loans made to Mr. Eaton, or made to some of the companies like the Chertsey Company or one of the other companies he was interested in, as to the type of provision in the notes given with reference to interest in dividends and that the interest, or about a part of the dividends

1961 that would be received from the stock if paid by the company.

"Would you comment on it, please?

"A. That is right. Any profit occurring from the joint enterprise on the investment were to be split mutually, 50 per cent to each. We could not ask Mr. Eaton to do so and lose his own money, so we divided the profit like joint partners in any enterprise.

"In addition to that, in the argot of the marketplace he gave us a call and we gave him a put. That is the way it is described in the security market day by day and there are hundreds of thousands of such agreements made daily and weekly.

"In other words, the notes, I think the promissory note, secured by the hypothecation of the West Kentucky stock. They have been renewed annually since that time, or whatever their maturity dates are. They may have been changed since I have gone, I don't know.

"There was no thought when the market dropped in value of West Kentucky of asking for more security because there was no intent to sell the security, and we were conscious of the intrinsic value of the West Kentucky Coal stock and familiar with its reserve assets. It had over a billion tons of reserve coal adjacent to the river, strategically located in the center of the steam coal consuming market at the present and in the future.

1962 "Chemical plants are going to locate on our riverways and many other industries. The DuPont Company in its stockholders' report of last week predicted that the chemical industry will expand for the next 10 years twice as fast as the national rate of economic expansion. And it is going to come near the rivers where there is cheap coal and transportation and acess to markets.

"So we think that West Kentucky Coal Company is something worthwhile as a long term investment, not only financially but in the interest of our members in that area who are given employment, who have been raised out of their previous servitude and are more prosporous than they ever were in all their lives. And in that respect, the money of the United Mine Workers invested there, which is primarily acquired, paid in by the members for the use of the union in promoting the well-being of the members, that has brought a great return already, enough to justify the investment.

"Now, on the question of why didn't we ask for more security. Our complete confidence in the financial success of that corporation, if efficiently managed, and that is an obligation of the management and their Board of Directors, with which we have nothing to do and do not attempt to exercise any influence in the management of West Kentucky mines or any other coal mines in the United States. We have a standard clause in our agreement that has been
1963 there for decades of time, quoted as follows:

" 'The management of the mine or mines, the direction of the working force, is exclusively vested in the coal operator and the United Mine Workers of America will not abridge this right.'

"We follow that out. We hold the operator responsible for the management of the mine, and far be it from the United Mine Workers of America to encroach on his prerogative, because we have troubles of our own and work to do."

MR. ROWNTREE: Going to page 1310.

MR. COMBS: If counsel don't mind, would counsel read the rest of the questions on that page?

MR. ROWNTREE: In as our own questions?

MR. COMBS: No. I will read them.

MR. ROWNTREE: I will be happy to read them.

MR. COMBS: Just so it will be in the regular order.

"Q. Even though United Mine Workers is a substantial holder of stock in the West Kentucky Coal Corporation?

"A. Even though the United Mine Workers is a substantial holder of West Kentucky stock, we do not interfere with the management and have not done so at any time and have no future intent to do so. There can be no conflict of interest between the obligation of the officers of this union
1964 to its membership. I would rather see the entire West Kentucky account go down the drain than to permit the losses or injury of the members of the United Mine Workers of America. We owe fealty to no other considera-

tion except to the men who employ us, who give us their confidence, and as far as I am concerned, whose bread I eat, whose song I sing.

"Q. West Kentucky Coal Corporation today, I believe, is a signator to the 1950 collective bargaining agreement as amended, is it not? West Kentucky Coal Company is a signator to the agreement?

"A. Oh, yes.

"Q. They were not at one time members, were they?

"A. No.

"Q. I will ask you whether as a stockholder you people have put pressure on them as a stockholder of the corporation or on Mr. Eaton to get them, to force them to sign a contract, or has that been voluntarily signed?

"A. None whatever, because Mr. Eaton was obviously a sagacious business man of wide repute and eminent success and enjoys the reputation of being liberal in his viewpoints in relation to labor and its industry.

"We knew that as a practical proposition it would have been foolhearty and not wise judgment to attempt to operate an industry of that magnitude without having the
1965 good will of the miners as expressed through membership in this union."

MR. ROWNTREE: Going to 1310. Now, I thought we had a much better Mr. Lewis yesterday than we have today.

This next witness is a witness at the trial and I would like to take up the cross examination on him, he is the government witness, T. Reed Scollon, of the Bureau of Mines.

MR. COMBS: I might say this, that we have agreed to the reading of this cross examination if counsel desires. This is, of course, testimony in chief but I would like to advise counsel that we have subpoenaed Mr. Scollon, we expect him to be here and the testimony that he is reading now is as of 1960 and it will be current. I want to advise

counsel that we have subpoenaed Mr. Scollon to testify here in person.

Now, he can use his own judgment.

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1989 MR. ROWNTREE: May it please the Court, we would like to interrupt the reading of depositions with this witness, with Mr. J. C. Kelley.

THE COURT: All right, if there is no objection you may do so.

J. C. KELLEY,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Walker:

Q. Would you please state your name, sir?

A. J. C. Kelley.

* * * * * * * * * *

Q. Where are you employed?

1990 A. By Tennessee Products and Chemical Corporation.

Q. And where are you stationed with your employment?

A. At Whitwell, Tennessee.

Q. And what is your title or job with the Tennessee Products?

A. Manager of the properties and chief engineer.

* * * * * * * * * *

1992 Q. At the present time what are your duties with Tennessee Products and Chemical Company, sir?

A. Overseeing their properties at Whitwell.

Q. Are you doing any engineering work at this time?

A. No.

Q. Is there any engineering work being done on the properties at this time?

A. Maybe in the last six months, maybe there has been a week's work.

Q. Are any of the mines working at this time?

A. There's five small mines working, yes.

* * * * * * * * * *

2029 CROSS EXAMINATION

By Mr. Rayson:

* * * * * * * * * *

2033 Q. Mr. Kelley, you have told us that you worked for TCI, I believe?

A. Yes.

Q. When did you last work for TCI?

A. August the 13th, 1948.

Q. August the 13th, 1948?

A. Yes.

Q. Have you done anything for them since then?

A. For TCI?

Q. Yes.

A. Not for pay. We have made joint surveys with TCI since that time, yes.

Q. What did you do for TCI with respect to this property of Tennessee Products?

A. I made these maps for TCI from the time it was leased on September, 1929 until today.

Q. Until then?

A. Until '48.

Q. And then did you start doing the same thing for Tennessee Products?

A. I started for Tennessee Products as a client when I was free lancing for three years in Birmingham, and I continued to make the maps during that period.

Q. I see. And you have continued up to this time
2034 to do that?

A. Yes.

Q. Are you making these maps in order to give this information to TCI so as to show TCI how much coal it has

left in this particular area, is that the purpose of these maps, or one of the purposes?

A. That's one of the purposes, yes.

Q. And, in fact, Tennessee Products is required by TCI to do this, isn't it?

A. Yes.

Q. And Tennessee Products has to obtain permission from time to time before some of these mines can be opened, isn't that right?

A. We normally present projections to TCI for approval.

Q. TCI, does it have a resident engineer there at this time?

A. No, sir.

Q. They rely upon you to perform this service?

A. Not altogether, no, sir.

Q. And keep them abreast?

A. Not altogether.

Q. Do they periodically send a man in to investigate their properties?

A. Every two months.

* * * * * * * * * *

2053 Q. By the way, you knew Mr. Travis for a number of years, I take it?

A. Yes, sir.

Q. Do you recall what mines he had an investment in as an operator?

A. I don't know of Mr. Travis having an investment in any mines for sure.

Q. You mean that you were his No. 1 assistant when he was there?

2054 A. No, I was chief engineer.

Q. You were chief engineer?

A. Yes.

Q. But, as far as you knew, he wasn't one of these operators, truck mining operators?

A. He was not an operator of a mine himself, no.

Q. You didn't know him to be a partner to any truck mine operator?

A. Only through rumors.

Q. He didn't tell you about it?

A. No, sir.

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2123 THOMAS L. FEAZELL,

DIRECT EXAMINATION

* * * * * * * * * *

2134 Mr. Rowntree: I will read a portion of that letter. This is a letter from Mr. Anderson, Coal Purchasing Agent of TVA, to West Kentucky Coal Company, attention Mr. T. J. Hoffman.

"This confirms my telephone award of this contract on April 3, 1961, to R. H. Bowden.

"In accordance with your bid dated February 10, 1961, on requisition 37, award is made for the tonnage and the terms set out with initial deliveries beginning April 10, 1961, at the rate of 19,250 tons a week. The price to be paid for the coal is $2.90 per net ton f.o.b. rail cars on the IC or L&N Railroads at Pee Vee and/or East Diamond, Kentucky. The coal is to be 6-inches-by-0 or 3-inches-by-0 from the No. 9 seam and is to be produced at your Pleasant View or East Diamond mines.

"Award is made for 19,250 tons a week for a term of 10 years with an option to TVA for an additional

2135 19,250 tons a week for a term of 9 years. Notice to increase the rate of delivery to 38,500 tons a week may be given by TVA at any time up to January 1, 1962, with full schedule deliveries, unless otherwise mutually agreed, beginning as specified by TVA but not earlier than 12 months from the date of such notice and no later than July 1, 1963. Initial delivery under the option tonnage may begin at a buildup rate, as mutually agreed between the parties, at least six months before deliveries at the full scheduled rate are to begin. Any buildup tonnage furnished

would apply against the total option commitment of 19,250 tons a week for 9 years, and the total term for the option tonnage would be reduced proportionately."

Go down to the middle of page 10.

"Q. Mr. Feazell, I show you a letter dated December 29, 1961, from TVA to West Kentucky Coal Company,'Subject: Contract 61P-37-T24,' and ask you if that was among the papers in the T-24 file?

"A. Yes, sir, it was."

Mr. Rowntree: We offer that as the next exhibit.

The Court: Exhibit 185.

(The letter referred to above was marked p185 and received in evidence.)

Mr. Rowntree: Reading from that letter, "This will confirm our telephone conversation with you on
2136 December 28, 1961, wherein you were notified that TVA is exercising the option set out in section 1 of the above contract to purchase an additional 19,250 tons of coal a week for a term of nine years.

"In accordance with the contract provisions for the optional tonnage, initial delivery shall begin about July 1, 1962, and proceed at a buildup rate to be decided later by mutual agreement. Deliveries at the full scheduled rate of 19,250 tons a week are expected by about January 1, 1963."

* * * * * * * * * *

2227 MR. ROWNTREE:

* * * * * * * * * *

Go to the deposition of Mr. Carl McFarlin, Jr., taken at Nashville, Tennessee, July 16, 1965.

CARL McFARLIN, JR.

DIRECT EXAMINATION

(Mr. Rowntree read the questions and Mr. Chambliss the answers.)

"Q. What is your name, sir?

"A. Carl McFarlin, Jr.

* * * * * * * * * *

"Q. Were you employed at one time by Tennessee Products and Chemical Corporation?

2228 "A. Yes, sir, I was.

"Q. What years did that span?

"A. Off and on from '38 to '43, when I went into the service; then '46 until October of '60.

"Q. What was your education?

"A. I was educated in the public schools of Birmingham, Alabama, then to preparatory schools in Tennessee; then graduated with a BS in chemical engineering at Vanderbilt University.

"Q. What year was that?

"A. It was in '43. I want to make a correction; I went to the Navy in '44.

"Q. You got out of the service in '46?

"A. In April of '46.

"Q. Then came back to Tennessee Products?

"A. Yes, sir.

"Q. For what period of time were you in charge of the coal sales and coal production operations of Tennessee Products?

"A. I was familiar with the coal mining operations the whole time I was with Tennessee Products, my first job being in the coal mines. But I was in direct charge of the coal mining operations for approximately seven years before I left.

"Q. Were you vice-president of the company in

2229 charge of coal operations?

"A. Yes, sir, that was one of the things that I did.

"Q. Did you say you actually worked in the mines at the beginning of your tenure with Tennessee Products?

"A. I was project engineer of the Reel's Cove opening.

"Q. That's the big mine on the Products' property?

"A. Yes, sir.

"Q. What job did you have with the company immediately before you became vice-president in charge of the coal operations?

"A. I had quite a few. I was assistant vice-president assistant to the operating vice-president, which put me in all of the operations of the company.

"Q. Was your father president of Tennessee Products and Chemical Corporation all of the years that you were there?

"A. No, sir. He was for quite a few. The last three years I was there, Mr. Rolland Baum was president, R. O. Baum.

"Q. When did your father cease to be active in the business?

"A. Truly in 1958.

"Q. Did he retain some position with the company after that?

"A. He was the chairman of the board up to the middle of '59, I think.

"Q. While your father was president, were you
2230 working closely with him?

"A. Yes, sir, I did.

"Q. Did you have consultations with him?

"A. Almost constantly.

"Q. Did he work closely with you on setting policies?

"A. Yes, sir, he did.

"Q. And was this particularly true with respect to the coal operations?

"A. Yes, sir.

"Q. How old is this company, Tennessee Products and Chemical Corporation?

"A. This is hearsay. I understood it was formed during World War I by the merger of several companies in middle Tennessee, Bon Air Coal and Iron, J. J. Gray Iron Company, Chattanooga Gas and Electric—these are estimations of their names.

Deposition of Carl McFarlin, Jr.—Direct

"Q. Was this a diversified company, handling several different products?

"A. Yes, sir. At one time we had 13 different operations.

"Q. Can you give us the nature of some of these operations besides the coal?

"A. From coal we made our coke, from coke we made pig iron, and we made ferro alloys, we made chemicals, building materials such as Perlite, and so on, char-
2231 coal and charcoal briquettes, various wood chemicals and the by-products that we could find; we made insecticides.

"Q. There was quite a diversification?

"A. Yes, sir.

"Q. But you had some integration, however, with respect to coal products?

"A. That's right.

"Q. How long has the company engaged in coal mining operations?

"A. The company from its inception was engaged in coal mining.

"Q. Where did these operations take place?

"A. In and around Sparta, Tennessee, and north of Sparta at Ravenscroft, in that area there. That is where the company commenced mining coal.

"Q. How long did those particular operations up in there continue?

"A. They continued until about 1935 or '36.

"Q. Did you have operations down in Sequatchie, Grundy and Marion Counties?

"A. Those properties were brought into Tennessee Products in, I believe it was either '37 or '38.

"Q. Who owned those properties?

"A. They were owned by what was Whitwell Smokeless Fuel Company.

2232 "Q. Did it actually own the land?

"A. No.

"Q. Who owned the land?

"A. Tennessee Coal and Iron Division of U. S. Steel Corporation.

"Q. This company, TCI, we will call it, had it leased that property to the Whitwell Company with the right to mine the coal?

"A. Yes, sir.

"Q. What seam of coal is on that property?

"A. The Sewanee seam.

"Q. What type of operation existed there with respect to the nature of the mines at the time Tennessee Products acquired the operation?

"A. There was only one large hand-loading operation.

"Q. Hand loading?

"A. Yes. Part of it was of the most primitive type using mule transportation and things of that sort. This was the old Whitwell mine and the coal was brought down the mountain by an incline.

"Q. Was this a deep mine?

"A. It was a deep mine.

"Q. Was it a large-size mine?

"A. Yes, sir. As I recall with an approximate payroll of five or six hundred men.

2233 "Q. Do you have any idea how far back that operation went?

"A. You mean when they stuck the first pick in the ground?

"Q. Yes.

"A. Coal was first mined in that area back in the 1800's.

"Q. Do you recall how many acres are in this leasehold tract down there?

"A. No, offhand I don't. I would say that there were twenty-four to twenty-five thousand acres of coal land up there, but not mining coal, in the lease.

"Mr. Combs: May I inquire of Mr. Rowntree as to what time he is talking about?

"A. Under lease or in the field?

"Q. Under lease.

"A. Under lease, 25,000 acres at the time I left the company.

"Mr. Combs: In 1960?

"A. Yes, sir.

"Q. How many acres where there, say, in 1952?

"A. In 1952, I would say approximately half that many acres.

"Q. Do you know when the present lease was entered into?

2234 "A. I would say the negotiations took place somewhere in the early fifties."

Mr. Rowntree: We offered as an exhibit a copy of the lease, and Mr. Lansden said he had a copy and went out to get it.

"Q. Mr. McFarlin, of course, the lease speaks for itself, but do you know what the situation was before this last lease on the property?

A. What do you mean, do I know the situation?

"Q. With respect to the holding of the leasehold interest in the property by Tennessee Products?

"A. Yes, I do.

"Q. What was the situation?

"A. There were two leases, one was what we called the Whitwell lease, and the other one we called the Reel's Cove lease. They covered different properties and they carried different provisions.

"Q. Were they both with TCI?

"A. Both with TCI.

"Q. Was this situation back at the time when there was roughly half the acreage that you are talking about heretofore?

"A. Yes, sir.

"Q. But has the company held the same number of acreage, the same size tract, since the signing of the

2235 last lease?

"A. Yes, sir.

"Q. How much royalty was to be paid under this last lease?

"A. Seventeen cents a ton, with a minimum of $5,000 per month.

"Q. Was it required in the lease that the lessor, TCI, approve mine projections before entering?

"A. Yes, sir.

"Q. And who was responsible for truck mine operations paying royalties under the lease?

"A. Under the lease?

"Q. Yes.

"A. Tennessee Products was responsible for paying the royalty to TCI on all coal.

"Q. Do you recall the termination date of this lease?

"A. As I recall, it was a 20-year lease with an option to renew for an additional 20 years.

"Q. Did Tennessee Products hold this option to renew?

"A. Yes, sir. It hasn't been terminated yet, it's still going.

"Mr. Wheeler: It still has a termination date, doesn't it?

"A. It was 20 years from the date of execution, with a right in the contract to renew.

2236 "Q. (Mr. Rowntree handing witness document.) Do you recognize that as being the lease? I observe on this lease that Mr. Lansden has just brought in that it has a date of January 7, 1955. I was under the impression that it was earlier. Is this the last lease?

"A. This is the last lease.

* * * * * * * * * *

2237 Mr. Rayson: Your Honor, this is paragraph 18 of the lease which reads as follows:

"Operators shall, not later than the fifth day of each calendar month, furnish lessor with written reports in accordance with forms prescribed by lessor, said reports indicating the actual distance driven in each main or room

heading, the actual number of rooms, long walls, short walls, or other methods of mining, in which coal has been mined and the total number of tons of coal removed during the preceding calendar month from each main or room heading, said reports to be in every way satisfactory to lessor. It is intended that the operator may mine and remove coal through the use of contractors and the operations of such contractors shall be considered the operations of the operator."

Mr. Rowntree: I think there are some things in there I should read. I think we should point out that this lease covers 24,075 acres of land. On page 3, paragraph 5, it states:

"Operator shall, as royalty, pay to lessor for all coal mined from said land, including coal used in boilers or otherwise in mining, washing, hoisting, tramming, or
2238 conducting other operations, the sum of 17 cents for each ton of 2,000 pounds."

On page 4, paragraph 6:

"It is understood and agreed between the parties hereto that whether coal is or is not mined under this contract and sold each month the minimum sum to be paid by operator to lessor each and every month during the term hereof for the preceding month shall not be less than $5,000 per month beginning with the payment for the month of January, 1955."

On page 5, paragraph 8:

"In order to secure unto lessor the payment of all sums of money due as herein provided, a lien is hereby given by the operator to lessor on all tracks, structures, improvements, machinery, equipment, livestock and harness, commissary goods, and all other personal property now located on or which operator may from time to time place upon the leased premises, and operator shall not remove from its mines or from the leased premises any of said property until all sums of money due lessor have been paid; and,

in event of failure of operator to comply with all covenants of this contract within 30 days after lessor shall have given operator notice by letter addressed to operator at Nashville, Tennessee, which shall be sufficient notice to operator of any default in payment of any sums of money hereunder and the intention of lessor to exercise the lien hereby
2239 given, lessor shall have the right to take possession of all tracks, structures, improvements, machinery, equipment, livestock and harness, commissary goods, and all other personal property now located on or which operator may from time to time place upon the leased premises, and after giving 10-days' notice by posting notices on the premises sell the same at public outcry in front of the courthouse of the county in which the property is located for cash, and to apply the proceeds of said sale: First, to the payment of any expense incurred in securing possession of said property, advertising, selling, and conveying, including a reasonable attorney's fee; second, to the payment of all sums of money as herein provided; third, the balance, if any, to be turned over to operator. Lessor shall have the right to purchase at such sales."

Paragraph 9, top of page 6:

"Operator agrees to submit to lessor for approval projects of all mine workings showing locations of proposed openings, entries, haulage ways, and wide work, by whatever name called; such projections to be submitted for approval at least 60 days before proceeding with operations based on same."

Paragraph 11, page 6:

"Operator shall be responsible to lessor for all royalties or other payments which may become due lessor for
2240 coal mined by truck mine operations under any sublease or assignment and any rights to inspect and control operations retained by lessor under this contract shall also apply to truck mine operations. Operator, however, shall not have the right to mine coal in the area be-

tween Kelly's Creek and Griffith Creek by means of truck mining."

Paragraph 27, page 10:

"This contract shall become effective on January 1, 1955, and shall terminate, except as herein otherwise provided, at the end of the 30th day of April, 1972. Operator shall, however, have the right to renew this contract for a 20-year term by notifying lessor in writing of its desire for such renewal prior to May 1, 1972."

And finally, paragraph 29, page 11:

"This contract supersedes and terminates effective at the end of the 31st day of December, 1954, except as to any unsatisfied claims, obligations and liabilities heretofore incurred thereunder, the contract between lessor and operator dated April 26, 1952, and all amendments thereto."

Top of page 13.

(The reading of the deposition was continued.)

"Q. It has been frequently mentioned in this case that there is a thing called the southeast Tennessee coalfield. What is that?

"A. It's primarily the Sewanee seam.

2241 "Q. Where is that situated?

"A. It's situated on the plateau west and north of Whitwell, Tennessee.

"Q. How many counties is that in?

"A. Marion, Sequatchie and Grundy.

"Q. Does the coal extend on north of those counties?

"A. Yes, sir, it does, but it is more spotty and an inferior grade.

"Q. That seam, or the coal does extend on up into—

"A. Into Pikeville and that area up there.

"Q. What is the quality of coal in the Sewanee seam on this property?

"A. It is very high-grade coal, metallurgical coal, you might call it, it is good for coking purposes.

"Q. Do you recall the BTU roughly?

"A. 16,200 A and M free would be one way of expressing it, as mined 12,932.50.

"Q. How does the seam lay in the ground?

"A. It's a relatively flat seam, pitches around edges of the south end, it has an average thickness we used to say of 39 inches, which would vary from a pencil line up to 5 feet.

"Q. Is it regular or irregular in thickness?

"A. It's irregular in thickness.

* * * * * * * * * *

2245 "Q. Can you give us a history of the small mines, when they started?

"A. The small mines started sometime during World War II. I'll — I was not there — and operated in a modest way then, and were operating in a very modest way when I returned in April of '44.

"Q. Did Tennessee Products operate these small mines itself?

"A. No, sir.

"Q. How did it handle that?

"A. By subleases that were approved by TCI.

* * * * * * * * * *

2255 "Q. And is Mr. W. J. Travis dead?

"A. Yes, sir, he is.

"Q. What was his position with the company?

"A. He was vice-president in charge of the local

2256 coal mining.

"Q. Was his office down in the Whitwell area?

"A. Yes, sir.

"Q. Where was your office?

"A. Here in Nashville.

"Q. And did you get reports from him as to the conditions down there?

"A. Yes, sir, I did.

"Q. And the situations that would arise?

"A. Yes, sir.

"Q. Now, did Mr. Travis have any responsibility over the truck mines, small mines?

"A. He was in charge of all mining operations.

"Q. Did he have any interest, personally, in the small mines?

"A. Yes, sir, he did have some interest in some of the mines.

"Q. Was the management of Tennessee Products advised that he did have an interest in these small mines?

"A. Yes, sir.

"Q. What was the reason for that?

"A. The company actually gave him an interest in certain of these mines because of the outstanding job that he did in pursuing the truck mining operations, and it
2257 was as a method of compensation for his good work.

"Q. How did his period of service in charge of operations compare with the operations that preceded him?

"A. Would you rephrase that? I didn't quite catch it.

"Q. What sort of productivity did he build up?

"A. Well, the truck mining operation when he took over was a very minor part of the operation, and under his direction and supervision it turned out to be the major coal-producing source from the field.

"Q. Did the United Mine Workers represent a majority of the miners in the coalfield?

"A. Yes, sir.

"Q. To what extent did they represent the men mining the coal in the field?

"A. Do you mean how many of the men were not members of the United Mine Workers?

"Q. Yes.

"A. I don't know of any of them that were not.

* * * * * * * * * *

2258 "Q. Did Tennessee Products sign National Bituminous Coal Wage Agreements?

"A. Yes, sir.

"Q. Did it sign the 1950 agreement?

"A. Yes, sir.

"Q. And did it sign the later amendments?

"A. Yes, sir.

"Q. Why did it sign these?

"Mr. Combs: I object to that question. If they signed a contract, I assume it was a subject of negotiations for signing it.

"Q. Is that true?

"A. No, sir, even our efforts to negotiate were met with deaf ears. Even our efforts to negotiate for the national coal contract and its amendment was met with deaf ears, with words to the effect that 'This is it.'

"Q. Will you state whether or not you had any alternative but to sign it?

"A. Not without facing a strike.

2259 "Q. Did you have any experience that proves this? Did you have any experience in the period of 1950 to 1960 that would bear upon the preceding question?

"A. Would you rephrase the preceding question, please?

"Q. With respect to the signing of the contract.

"A. Yes, sir.

"Q. What was your experience and when?

"A. It is still a little bit hazy.

"Q. With respect to the signing of the contract or else.

"A. Well, I don't recall the year, but I believe it was 1959, that we endeavored to get some clarification and endeavored to find out and get clarified under two forms of contract—the captive form of contract was the first one that was offered, and the non-captive contract that was offered. To this end there was a meeting held in Washington with Mr. John L. Lewis, the district representative out of Middlesboro, the local representative, our attorney from Jasper or South Pittsburgh, the president, and myself, and a labor relations representative of Merritt, Chapman

and Scott out of New York. This was held in the office in Washington of the United Mine Workers.

"Mr. Rayson: Let me interrupt and ask you the man's name. You say a labor relations representative.

"A. Of Merritt, Chapman and Scott. It was
2260 Clair Helmer, who was in charge of labor relations for the parent company of Tennessee Products. This was held in Mr. Lewis' office in Washington.

* * * * * * * * *

2262 Mr. Rowntree: November 18, 1958, W. J. Travis
2263 to Mr. Carl McFarlin, Jr. There are two memorandums of the same date.

"Subject: Lease Truck Mine Operations, Past and Future Plans.

"In 1943 we opened the Reel's Cove mine. We transferred approximately 200 men from the old Whitwell mine which was a hand-loading mine employing approximately 800 men. In 1946 we closed the old Whitwell mine which threw about 600 men out of work.

"Up until 1946 we had leased out crop coal to small operators for truck mines and at the time the Whitwell mine closed we had about six or eight so-called truck mines operating on our lease. In 1946 we started leasing out additional coal to our better miners who were out of coal due to the closing of the Whitwell mine. From 1946 up until January, 1958, we continued leasing coal to independent operators who operated hand-loading mines.

"The hand-loading operations were at Whitwell and Daus, Tennessee. The coal from these operations was purchased by us if we had a market for the coal and if not the operators were permitted to sell the coal anywhere they could.

"On or about October 1, 1957, we had approximately 9,000 hand-loading mines at Whitwell producing from 10 to 100 tons per day or a total of 3,500 tons per day. At Daus we had approximately 32 mines producing ap-
2264 proximately 2,000 tons per day.

Deposition of Carl McFarlin, Jr.—Direct

"In October of '57 management decided not to open any more hand-loading mines. Our thinking was to change from the hand-loading mine working from 2 to 15 men producing approximately 8-½ tons per man shift to small mechanical mines employing approximately 20 men and producing approximately 400 tons per day, or 20 tons per man shift.

"The hand-loading mines we had leased in the past would be started without any capital. The mechanical mines we planned leasing would take a capital investment of not less than $100,000. Our thinking was to let the present hand-loading mines work out by not adding any more mineral to the present lease. We figured that we would eventually end up with approximately eight small mechanical mines at Whitwell producing approximately 2,500 tons per day, and six mechanical mines at Daus producing approximately 2,000 tons per day.

"We started our program in October of 1957 and we have not opened any hand-loading mines since this date. As of today we have 24 active mines at Daus and 41 active mines at Whitwell. The mines will work out in the next two or three years unless we open others or give the present mines additional territory."

The Court: Twenty-four active mines at Daus and what?

Mr. Rowntree: "And 41 active mines at Whitwell.

2265 The mines will work out in the next two or three years unless we open others or give the present mines additional territory.

"On about December 1, 1957, we started getting tonnage from our first mechanical mine under our new program. The mine is known as the Shook and Thomas Mine. The mine operates under a UMW of A contract and pays wage scale and Welfare Fund. This mine produced approximately 6,500 tons of coal in October, which is equivalent to the tonnage from 10 to 15 hand-loading mines. The mine is equipped with mobile loader and piggyback conveyor.

* * * * * * * * * *

2267 Mr. Rowntree: "Matters that should be brought out, also things we should guard against in any meet-
2268 ing with Mr. Lewis' office.

"(a) No operator of a new mine would ever agree to tie his mine up by agreeing to hire from another mine's panel.

"(b) If the union cannot control the action of its members in this matter, Tennessee Products will be forced to drop its mechanization program and continue hand-loading mines.

"(c) Tennessee Products has plans for opening a new mine in the near future, but would never agree to the demands the Reel's Cove committee is making on this indipendent operator.

"The age of our Reel's Cove employees and the men on the panel is as follows:

"Number of men: Age and percentage.

"Two, two to thirty years of age; 79, thirty to forty years of age; 92, forty to fifty years of age; 56, fifty and over.

"We do not have a single employee who has had experience in loader and shuttle car type mining. In opening a company-operated mine, we would agree to pick a percentage of our men from present employees.

"(d) We should not agree to collect the Welfare from the lessee. We do not want to commit ourselves not to open hand-loading mines in the future.

"Several weeks ago the Tennessee Consolidated
2269 Coal Company had all its operations closed due to a labor dispute. The district officials could not control the men and after several meetings with the district representatives the coal company carried its case to Washington. A commission was sent from Washington to meet with the mine committee. The committee informed the local union that the Washington office would be forced to pull the union's charter unless the union complied with the terms of the contract in settling labor disputes.

* * * * * * * * * *

Mr. Rowntree: The next part of this exhibit refers
2270 to the language of the protective wage clause, well, it's from Mr. McFarlin, Jr., to Mr. Travis, forwarding that language to Mr. Travis, and then a telegram of December 15, 1958, it's really December 12, 1958, to Mr. John L. Lewis from Mr. Baum, president of Tennessee Products, "This corporation in studying the proposed amendment to the National Bituminous Coal Wage Agreement dated December 1, 1958, is determined that before any action is taken it is imperative that: One, your organization clarify with respect to the particular operations of this corporation the definite interpretation and intent of the 'existing agreement' modification found under the protective wage clause and, two, acceptable disposition be made of local operational disputes with which your district office is familiar."

The next is another statement of opinion by Mr. Travis with respect to this problem and the problem that management had at that time. He states, "I feel sure Mr. Lewis intended for Tennessee Products to be surety for coal sold off its lease through others, in fact, he could probably hold us as surety through the 'application of contract to coal lands.'

"The 1952 National Bituminous Coal Wage Agreement."

We don't put that in for anything except to show the state of mind of management in approaching this meeting with Mr. Lewis.

2271 Mr. Rayson: Your Honor, there is another paragraph of this memorandum which we feel should be read, a letter in this collection of documents which comprise Exhibit 207. There is a letter to Waller, Davis and Lansden, asking for that law firm's comment on the 1958 United Mine Workers Agreement and Mr. Travis refers to a meeting with Mr. Waller at another point in the memorandum from which Mr. Rowntree just read. Mr. Travis states as follows:

"One of the most interesting things to come out of Monday's meeting was Mr. Waller's statement that Tennessee

Products would not be surety for the truck mine operators if Tennessee Products did not buy their coal. If this is correct we would have little cause for worry in completing the hand-loading mines since we do not want to market this coal anyway."

The Court: Does that complete the exhibit?

Mr. Rowntree: That completes the exhibit.

* * * * * * * * * *

2272 Mr. Rowntree: Yes. Start at the top of page 32, line 5.

(The reading of the deposition was continued.)

"Q. Who is Mr. Moody?

"A. Mr. Moody was the house counsel for Tennessee Products.

"Q. Who is Mr. Waller?

"A. Mr. Waller was general counsel for the corporation, his firm.

* * * * * * * * * *

2273 "Q. What problems did you have when you went to Washington?

"A. We were primarily—the biggest problem that faced us was signing the National Coal Wage Agreement, and the problem that was forefront in our minds at the time was to be relieved of any responsibility of the Welfare payments on coal we handled from independent contractors.

"Q. Do you recall what the protective wage clause provided in substance? Was this part of the 1958 amendment that you accepted?

"A. Yes, sir. As I recall one of the major things was being responsible for the Welfare payments being made on the coal that was handled in their sales agency if they were also signatory to a contract.

"Q. State whether or not" —

Mr. Rayson: (Interposing) Just a minute. Your Honor, of course, we object to the statement of the witness

2274 as to what the protective wage clause provided.

The Court: All right.

(The reading of the deposition was continued.)

"Q. State whether or not you were buying coal"—

The Court: (Interposing) I am not sure I know how to rule on your objection other than just to accept it as a statement for the record.

Mr. Rowntree: I think maybe to clarify it by saying the question was asked to determine the state of mind of these negotiators or these people who were going to Washington and that would be the only substantive proof that it would bear on, I think the state of mind, of course, of his interpretation of the contract would mean nothing except—

The Court: Yes, I will sustain it insofar as it is a statement purporting to be an interpretation of the contract.

(The reading of the deposition was continued.)

"Q. State whether or not you were buying coal from small mines on your property.

"A. Yes, sir, we were.

"Q. Did Tennessee Products and Chemical Corporation execute, or authorize the execution of the 1958 amendment after the meeting in Washington?

"A. Yes, sir, we did.

"Q. Did the Reel's Cove Mine pay the Welfare
2275 Fund on the coal mine at Reel's Cove Mine?

"A. Tennessee Products paid that Welfare on the coal mine at Reel's Cove.

"Q. Did you ever fall behind on that?

"A. No, sir.

"Q. Did you pay the union scale under the National Bituminous Coal Wage Agreement?

"A. Yes, sir.

"Q. At Reel's Cove?

"A. Yes, sir.

* * * * * * * * * *

"Q. Do you know whether or not the small mines on Tennessee Products property paid the Welfare Fund?

"A. Do I know that they paid it?

"Q. Yes.

"A. I know that they paid part of the Welfare payments.

"Q. Was this true for the period 1951 up to date?

"A. Yes, sir.

"Q. Up to 1960?

"A. Yes, sir.

2276 "Q. What about paying the union scale under the national contract, did the small mines pay that?

"A. No. All of the small mines were on a tonnage basis and they had various wage rates, depending on the size of the cars they were loading, they were paid on car basis, and essentially they were paying the union rate.

"Q. Did it depend on the initiative of the individual miner?

"A. Yes. He was paid on a tonnage basis, if he worked three hours and loaded so many tons of coal, he only got paid for the coal he loaded.

"Q. Do you recall what the strike in 1955 was about?

"A. We had so many strikes through the various years there that 'the strike in '55,' there might have been three or four, I am not sure.

"Q. Was there considerable interference with the operations of the coal mines in that field during the period 1950 to 1960?

"A. Yes, sir.

"Q. State what was the extent of the interference by picket lines and strikes was in the operations of the coal mines in the field in the period 1950 to 1960.

"A. We had various forms of strikes and labor interferences, not necessarily in chronological order, but some of them I can point out to you. One, there were

2277 strikes due to seniority claimed by men in the Reel's Cove Mine to the independent coal mines in the area,

which we had no direct control over. We had strikes due to pressure brought by the union to cause us to withhold Welfare Funds from mines that we bought coal from that were operating on our property. We had strikes because some of the men felt that there was an unfair division of the coal that was sold. In general, this was the major types of strikes we had during that period. Now, we had minor disagreements where they might be out for short periods of time, which would close the whole field down.

"Q. I will ask you if you are familiar with this letter dated October 18, 1955, from your father, Mr. McFarlin, Sr., to Mr. R. E. Harvey, Executive Vice-President of Merritt, Chapman and Scott?

"A. Yes, sir.

"Q. Were you participating in the negotiations that were going on in October of 1955 with the United Mine Workers?

"A. Not directly.

"Q. To what extent were you participating?

"A. I was on the phone in Nashville while the negotiations were going on in Whitwell.

"Q. Was your father in Nashville, also?

"A. Yes, sir.

"Q. Did he talk with you about this situation?

"A. Yes, sir, he did.

2278 "Q. Who was on the scene in the coalfield representing management?

"A. Mr. Travis.

"Q. Does this letter of October 18, 1955, represent the viewpoint of management of the company at that time?

"A. Yes, sir.

"Q. Will you state whether or not the letter of October 18, 1955, represents the problem confronting the company at that time? At that time what was the situation?

"A. While we were confronted with a wage increase and amendments to the labor contract, we were passing this

increase on to the people at Whitwell, who bought the coa in the process of negotiating escalation of the wage con tract with TVA; and also confronted with the demands o the union that we withhold the Welfare Fund from th small mines from which we bought coal.

"Q. Did you agree to withhold the Welfare Funds?

"A. Yes, if they would get signed authorizations fo us to do so from the independent operators.

"Q. Will you state whether or not the small mine opera tors signed such authorizations?

"A. They did not, and could not afford to.

"Q. Do you know if ultimately they did sign the au thorizations?

"A. In negotiations, I believe it was this time
2279 they signed authorizations on new contracts.

* * * * * * * * * *

2280 "Q. Mr. McFarlin, did a strike ensue over this situation with respect to the Welfare Fund with holding?

"A. Yes, sir, there was quite a lengthy strike that re sulted. I have forgotten exactly how it was finally resolved, but it was one that lasted quite a few weeks and then we agreed on new business that we would withhold the Wel fore Fund, or that portion of the Welfare Fund not paid by the individual contractors.

"Q. Do you mean that on new coal sales contracts?

"A. To TVA, yes, sir.

"Q. That this withholding would take effect?

"A. Yes, sir."

Mr. Rowntree: We offered that letter of October
2281 18th at that point, but I think that the testimony clarifies the nature of the letter and it is not necessary to put it into evidence.

Mr. Rayson: There's portions of this letter, Your Honor, we do think should be read into the record. If Your Honor

wishes, we could do that at a later point rather than to do it right now.

Mr. Rowntree: Any part goes in shouldn't the whole letter go in? All right. We will read the whole letter of October 18, 1955.

The Court: Let it be filed as an exhibit, No. 208.

(The letter referred to above was marked P208 and received in evidence.)

Mr. Rayson: The part of it that I would like to read, Your Honor, right now it's my understanding it is into the record?

Mr. Rowntree: I am going to read the whole letter.

* * * * * * * * * *

Mr. Rowntree: Yes. From Mr. Carl McFarlin to Mr. R. E. Harvey, Executive Vice-President of Merritt, Chapman and Scott.

"I am enclosing newspaper headlines and clip-
2282 ping from the Nashville Tennessean as of this date, covering in part some of the 'extra-curricular activities' in connection with coal mining. Seriously, the coal mine operation, boiled down, is substantially as when I last discussed the situation with you.

"Last week our company and our neighboring competitor, Tennessee Consolidated Coal Company, increased our offer made during the last few days of August to the independent mine operators from 15 cents per ton to 20 cents per ton. Ninety per cent of the independent mines on our property can comply with the terms of the United Mine Workers contract effective September 1, wherein wages were increased $1.20 per day with an increased price for their coal sold to us of 20 cents per ton. With a few exceptions, these mines will average 7 tons per man per day worked, which is about 17 cents per ton, leaving 3 cents per ton for dividing with the day workers and to cover the increased vacation pay of $40 per year. More than 50 per cent of our small mines will average 8 tons per man

per day, which would reduce the payment to the miner to 15 cents a ton, leaving 5 cents to be divided between the few day workers employed. This offer was well received and until last Friday we had high hopes of the mines resuming operations on Monday, October 17.

"On Friday, October 14, the District President of the United Mine Workers of America and two or three
2283 of the International representatives called on our mine manager and the mine manager of Tennessee Consolidated Coal Company for discussion with them of Welfare payments to the UMW on the part of independent operators. They stated these operators were not paying the full 40 cents per ton and wanted us to furnish them, monthly, with facts pertaining to the production of each operator, and so forth. In addition to this, they asked us if we would withhold the payment of 40 cents per ton to the Welfare Fund. We refused, through the two managers above referred to, their initial request of furnishing them this information. We stated we would withhold the 40 cents per ton to the Welfare Fund from each independent operator, provided we were furnished legal authority, executed by each operator, to withhold such payment for the union. (We knew they could not secure this.) They apparently also knew it; then discussion got down to a realistic level and they stated they knew that."

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2284 Mr. Rowntree: Well, we will stop right there on that sentence. The next sentence is: "Our representative made no comment with regard to this, except to say that so far as we knew the independent operators who sold us coal were paying the 40 cents per ton Welfare to the union. They denied this, and said that they were not receiving an average of more than 5 cents per ton from that area. Then they asked if we would give them a letter that on future contracts we would pay the independent operator a price for his coal that would permit him to pay

his Welfare payments to the union. This we refused to do. We stated that we did not know what the competition would be at the time of future lettings, and could not possibly commit ourselves to increasing our price a minimum of 40 cents per ton to TVA plus that part of the 20 cents which we had offered the men beyond what we might possibly recover from TVA under the present contracts. This meeting broke up with their telling the two mine managers that, 'You know how to get hold of us if you change your mind.'

* * * * * * * * * *

2285 "As the matter stands, we cannot become involved in the payment of this Welfare Fund. Under our present contracts, it would take 65 to 70 per cent of our profits if we were stuck with the entire bill. We cannot commit ourselves to the point that we might be obligated for future payments on future contracts, because we do not know at what price we will have to sell the coal in order to be competitive; therefore, we must, of necessity, let them sweat. I do not believe it will go beyond this
2286 week, although it may go for another two or possibly three weeks longer. I have tried to starve them out one or two times such as this during the past 25 years, but I've never been successful. They seem to live and thrive on huckleberries, hickory-nuts, and what food might be available, depending upon the season of the year. They are all good squirrel hunters and fishermen, and, now, it would not be too hard on them for this reason; then again, you cannot starve a man out or back to work when he is not accustomed to very much; you might starve me into going to work, since I have been accustomed to more than I would get if I were on strike or loafing, but that is not true with a coal miner. We do know that 75 or 80 per cent of the men want to go to work—as a matter of fact, are eager to go to work—and I cannot believe that they will stay out much longer than this week or possibly next. I shall keep you posted.

* * * * * * * * * *

"Q. Was that letter mailed by your father to Mr. Harvey?

"A. Yes, sir.

2287 "Q. State whether or not that letter represented the viewpoint of management on the problem.

"A. It certainly did.

"Q. Did the company change its policy with respect to the manner of sub-leasing to the small mines in the period of 1958-59?

"A. Yes, sir, it did.

"Q. Will you explain that?

"A. Well, we had agreed, number one, on all the business with TVA to collect Welfare Funds, and in previous contracts with our sub-lessee operators, we reserved an option to take their coal, first refusal. At this time, to get us out from under the obligation to withhold this, we ceased selling coal directly and rewrote all contracts to take out the clause where we had first refusal of the coal. This allowed the independent operator to make his own contracts and make his own sales to TVA, or whomever, and at that time we retained stricter royalty. If they used our facilities, we billed them on a tonnage basis for facilities used.

"Q. Does this apply to the hand loading at the small mines?

"A. Yes, sir, also applied to the small mechanized mines.

"Q. Did you start a program to produce further mechanization of the small mines?

2288 "A. Yes, we went on a very active program, in fact, even committed ourselves to TVA that we would go into mechanization of the small mines, endeavoring to assist the operators to get into the productivity per man that TVA was demanding that we attain. We made considerable surveys and spent considerable money actually finding out how efficiently the small mines could be operated.

"Q. Which was the first of the small mechanized mines?

"A. Really, the first small mechanized mine was Shook and Thomas, on Griffith Creek.

"Q. Does this letter of December 17, 1958, pertain to that mine, or is that some other mine?

"A. That is two mines that this letter refers to here. The Meeks Mine, which was across the hollow from the Shook and Thomas Mine, which we referred to as the Thomas Mine here. Both on Griffith Creek and both small mechanized mines.

"Q. Were those two of the first ones that were mechanized?

"A. Yes, the Thomas Mine was first and the Meeks Mine was second.

"Q. Does this represent a change in your method of leasing? This and the attachment to that letter?

"A. Yes, sir. This was the form that was evolved. There is a little penciled note I made there to the treasurer and also to our house attorney: 'We're waiting for you
2289 and now hope to get the show on the road,' with my initials to it. This was to get all the contracts along this line."

Mr. Rowntree: Do you have any objection to this exhibit going in as is?

Mr. Rayson: I think that exhibit includes a memorandum from Travis to McFarlin, Jr., dated December 17, 1958.

Mr. Rowntree: Correct. And a letter from Travis to Meeks, Marshall Meeks, with respect to his mine.

Mr. Rayson: With Meeks' acknowledgment of it in his handwriting?

Mr. Rowntree: Yes. And the letter from Tennessee Products, Assistant Vice-President, with respect to the Virgil Thomas mine acknowledged by Virgil Thomas.

Mr. Rayson: Yes. Your Honor, there is one point that we would call to your attention as we go along, although it's my understanding that all of these exhibits are in, that is, from the memorandum of December 17, 1958, from Mr.

Travis to Mr. McFarlin, Jr., in reference to the mechanized truck mines, Mr. Travis makes this comment, "We feel that these mines will be able to carry out the terms of the union contract."

* * * * * * * * * * *

2290 "Q. I show you a memorandum dated March 29, 1957, from Travis to small mine operators. Does that represent the situation with respect to the market at that time?

"A. Yes, sir, our contract had run out and we didn't know how many more contracts, or what tonnage we would have after that time.

"Q. Would the authorization to withhold the Welfare Fund apply to new business from that point on?

"A. Yes, sir, it would.

* * * * * * * * * * *

2293 "Q. What action did the Tennessee Products and Chemical Corporation take to further the mechanization of the small mines? Did they assist in any way?

"A. Well, number one, they did all the preliminary engineering. They paid for the facing up, building roads into the areas that had blocks of coal of sufficient size to mechanize, they went surety on equipment, on loans to the operators. They *suppled* them with certain equipment that they owned on very lenient terms, which is generators, belting, conveyors, things of that sort, and gave engineering assistance to each of these mines.

* * * * * * * * * * *

2296 "Q. Mr. McFarlin, what mines were to fill this contract T-3?

"A. As I recall, the original coal would come from hand-loading mines and we had a certain period of time to develop mechanized mines to eventually fill this contract.

"Q. From what area of the property was the coal to come?

"A. These were to be the Daus Mountain mechanized mines."

"Q. Now, did this contract contemplate a reducing price, based on productivity?

"A. Yes, sir.

2297 "Q. What was the productivity aimed at?

"A. Seventeen-and-one half tons per man a day.

"Q. And that is production based upon a test run to be made?

"A. Right.

* * * * * * * * * *

2303 "Q. And you had small mines at both places?

"A. Yes.

"Q. What was another general area of small mines called?

"A. Well, we had the Pocket Mines, and we had the Front Side Mines, we had Daus Mines, we had the Griffith Creek Mines, we had the Reel's Cove Mines, the Victoria Mines.

"Q. These are all different areas of the property?

"A. Yes, sir.

* * * * * * * * * *

"Q. Does the second paragraph of Supplement 7, dated May 1, 1959, reflect a productivity of 17 tons being

2304 attained by any of the mechanized mines?

"A. The increase was based on 17.22 tons, the supplement adjusting the price to the vacation pay, based on 17.2 tons per man-day, which was achieved by one of the mines.

"Q. That's the Jim Miller D-202 Mine?

"A. Yes, which was the first of the mechanized Daus mines.

"Q. Will you read the second paragraph of Supplement 8?

"A. 'On the basis of the information furnished in Mr. Travis' letters and in discussion with you and Mr. Travis,

we are reasonably convinced that you can attain an average productivity of 17.5 or more tons per man-day. Accordingly, as contemplated by the provisions of Section 10c, this contract shall continue beyond December 31, 1959.'

* * * * * * * * * *

2305 "Q. Will you read the letter of February 3, 1960?

"A. This letter is to Mr. E. C. Hill, Chief, Coal Procurement Branch, Tennessee Valley Authority, Chattanooga, Tennessee.

" 'Subject: Contract 57P-20979-T3.

" 'Dear Mr. Hill:

" 'The Daus Mountain mechanized mines were stopped from working on the morning of January 28th and work was not resumed until the night shift of February 2nd. The work stoppage was caused by small hand-loading mines setting up a picket line to stop the mechanized mines. This was due to operators of hand-loading mines selling their coal on spot contracts and not being able to pay wages as paid by mechanized mine operators on term contracts.

* * * * * * * * * *

2308 Mr. Rayson: Your Honor, there is a rather long letter in this exhibit dated May 8, 1957, which accompanied the bid of the company to Tennessee Valley Authority and we would like to have that letter to be considered as part of the record.

Mr. Rowntree: Yes, sir.

Mr. Rayson: It is three pages in length. I think that it should be a part of the record and unless it is requested I don't see any point in reading it at this time.

The Court: All right.

Mr. Rowntree: All right.

Mr. Rayson: We also wish to point out the coal contract supplement No. 6 dated March 20, 1959, which refers to an increase in the price that the company received for the coal shipped under this contract by reason of a wage increase granted to these employees under the wage agree-

ment of 1958 and that document, which was written by Mr. W. T. Wallace of TVA, this statement is found, "These increases are granted with the understanding that
2309 at least the equivalent of each will be paid to the miners."

We also wish to refer to a letter dated May 5, 1959, to Mr. E. C. Hill, Coal Procurement Branch, Tennessee Valley Authority, from Mr. W. J. Travis, Assistant Vice-President, Tennessee Products and Chemical Corporation.

This letter refers to the various mechanized mines on the property of the Tennessee Products and responds to questions which the TVA had asked the company, including a question in which it was requested that the company describe the relations of Tennessee Products to the new mechanized operation.

This response was made by the company, "Finance and control by Tennessee Products and Chemical Corporation operated by contractors."

Your Honor, we would like to reserve the right to read into the record at a later date other parts of the numerous documents contained in this exhibit.

* * * * * * * * * *

2311 "Mr. Rowntree: All right, sir. I will pass to another question.

"Q. Now, Mr. McFarlin, were you able to get contracts or have contracts made to be supplied by hand-loading small mines?

"A. Subsequent to what date?

"Q. After 1957 and to a period in '58?

"A. Some of the hand-loading mines operated on their own efforts to sell the coal. The TVA was their primary point of sales, although they did have other outside sales and quite a few of the small hand-operated mines sold on spot markets, joining with other small mines or individually, as they could find a market. In their scramble to do

this, of course, the price of coal went down, down, down on the spot market.

"Q. Do you recall the Holly Branch and Mount Olive contracts with TVA?

"A. Yes, I do.

"Q. What was that?

"A. There were two groups of mines that were located in close proximity to each other that sold directly to
2312 TVA on, I believe, a long-term contract, where they used our facilities for loading the coal and paid us a flat royalty per ton.

"Q. And this was a direct contract between the small mines and TVA?

"A. Yes, sir.

"Q. Do you recall the sales agent on that contract?

"A. No, sir, I don't.

"Q. Was it Tri-States?

"A. Tri-States Coal Company, I believe.

"Q. Do these memos dated January 16 and January 31, 1958, pertain to those contracts?

"A. Yes, sir, they do."

Mr. Rowntree: File those as the next exhibit. Any objection to considering those as part of the record?

Mr. Combs: No, we have no objection.

The Court: What is this?

Mr. Rowntree: Memos pertaining to the Mount Olive-Holly Branch contract with TVA by the small mines on Tennessee Products' property.

The Court: 215.

(The memos referred to above were marked P215 and received in evidence.)

(The reading of the deposition was continued.)

"Q. These are memos addressed to whom?

2313 "A. Mr. L. E. Wolfson, Mr. R. E. Harvey, Mr. R. O. Baum, to me, Mr. John W. Campbell, Mr. J. P. Beattie, and Mr. W. A. Moody.

* * * * * * * * * *

2318 "Q. Mr. McFarlin, the next sheets here show, at Whitwell, January 21, 1957, an average price of $3.81. That still shows 35 cents Welfare, is that right?

"A. That's correct.

"Q. And how much did the small mine operator assume to pay on the Welfare?

"A. Five cents at that time.

"Mr. Rayson: Do you mean by that including the 35 cents, that that was the 35 cents that Tennessee Products would pay and credit against $3.81?

"A. Yes, sir.

"Q. Now, the May 3, 1957, sheet shows average price $3.84, and underneath there are added figures including Welfare. And how much was added to the cost there?"

The Court: What date was that, May 3rd?

Mr. Rowntree: May 3rd, 1957.

"A. Fifteen cents for Welfare.

"Q. Was this after the deal was made that you have testified about?

2319 "A. Yes, sir.

"Q. How much did the small mine operator pay on that?

"A. Five cents.

* * * * * * * * * *

2320 "Q. I show you a letter dated December 28, 1954, from the president of the company to Mr. Wolfson. I will ask you who Mr. Wolfson was, Mr. Louis Wolfson?

"A. At this time he was president of Merritt, Chapman and Scott, who owned about 99.3 per cent of Tennessee Products' stock.

"Q. When did Merritt, Chapman and Scott acquire this interest in Tennessee Products?

"A. In '54, I believe.

"Q. And at that time, Mr. Wolfson was president of Merritt, Chapman and Scott, is that correct?

"A. Yes.

"Q. Did Merritt, Chapman and Scott acquire all of the stock of Tennessee Products?

"A. 99.3 or 99.7 per cent, somewhere in that neighborhood.

* * * * * * * * * *

2322 "Q. Was there close supervision by Merritt, Chapman and Scott going on with respect to capital expenditures on the part of Tennessee Products?

"A. As outlined in the letter there. Yes, very definitely, sir.

"Q. Do you recall whether or not Merritt, Chapman and Scott authorized substantial expenditures with respect to capital improvements on some of the plants of Tennessee Products?

"A. Oh, yes, sir.

"Q. Would you name some of those?

"A. Rockwood and the chemical plant, to name two offhand where there was considerable money spent.

"Q. Was any expenditure authorized with respect to Roane electric furnace?

"A. Yes, sir.

2323 "Q. What about the Chattanooga chemical plant?

"A. Yes, sir.

"Q. Do you recall what the amount of expenditures were authorized approximately on some of those projects?

"A. Well, for instance, on the Roane electric furnace plant about thirteen-and-a-half-million dollars was authorized on that plant alone. There were several million-dollar authorizations on the chemical plant at Chattanooga.

"Q. I show you a letter dated January 28, 1957, from Mr. McFarlin, Sr., the president of the company, to Mr. Wolfson. Did you assist in preparing that letter?

"A. Yes, sir.

"Q. Did that letter meet with agreement by you?

"A. I am sure it did.

"Q. I will ask you if the proposals in that letter were agreed to by you, as vice-president in charge of mining operations?

"A. Yes, sir.

"Q. With your father?

"A. Yes, sir."

Mr. Rowntree: Offer that as the next exhibit.

The Court: The date?

Mr. Rowntree: January 28, 1957, from Mr. McFarlin, Sr., to Wolfson.

The Court: 222.

2324 (The letter referred to above was marked P222 and received in evidence.)

(The reading of the deposition was continued.)

"Q. I show you a letter dated September 26, 1957, from Mr. McFarlin, Sr., to R. E. Harvey, and I will ask you who Mr. R. E. Harvey was?

"A. He was executive vice-president of Merritt, Chapman and Scott, and was later president.

"Q. Was Mr. Wolfson still the president at this time?

"A. Yes, sir, he was president until Mr. Harvey was made president.

"Q. Did you assist in the preparation of that letter?

"A. Yes, sir.

"Q. Did you concur in that letter as vice-president in charge of coal operations?

"A. Yes, sir."

Mr. Rowntree: We offer that as the next exhibit, being dated September 26, 1957, from McFarlin, Sr., to R. E. Harvey.

The Court: Exhibit 223.

(The letter referred to above was marked P223 and received in evidence.)

(The reading of the deposition was continued.)

"Q. I read from the second paragraph on the
2325 second page of the letter: 'We agreed with TVA to

submit a plan for revising our method of mining, using a different type equipment, expecting to increase the productivity per man to the point that would be acceptable to them and which they stated was necessary if we expected to continue in competitive position with mines in the West Kentucky coalfield.' When did West Kentucky coalfield become a serious competitive threat to your market here?

* * * * * * * * *

2333 "By Mr. Combs:

"Q. You say that large blocks of coal were being reserved by TCI. Would you say they have a right to do that under the face of the lease?

"A. They had the right to approve our projections.

"Q. They approved them for truck mines or approved them for —

"A. For our larger mines.

"Q. What about the reservations?

"A. They could say, 'We won't approve your projection to mine this block of coal with truck mining,' for instance.

"Q. In other words, the reservation was only in accordance with your lease on the type of mining they
2334 wanted?

"A. That's correct. The type equipment we were contemplating using was highly mobile, fast, modern equipment that required agile and young men. It required going outside of the field to do a job in a workman-like manner and bringing in men that had been trained in this type of equipment operation that didn't contemplate a long drawn-out period of training. Financially, it wouldn't justify itself when men were available that could run this equipment.

"The men at the Reel's Cove Mine recognized that this was possibly one of the things that was about to happen, and so they demanded seniority rights in any other mines that we might open. That was one of the points we were discussing with Mr. Lewis in our meetings. Also recog-

nizing the fact that Reel's Cove possibly had only two years, they decided to assert themselves through their local representatives there that any mine opened on the property, regardless by who, they were going to have seniority rights. They closed down the Griffith Creek Mines on several occasions, because they were demanding that Reel's Cove men be shifted to the mechanized mines.

"We took the position that we wanted to pick and choose our men, and certainly that some of the Reel's Cove men would be moved. It became almost intolerable for a period there of several months. They would close down mechanized mine operations by putting picket lines up, and
2335 other coercive measures, and keeping their jobs at Reel's Cove. Reel's Cove was still operating. The night shift would picket in the daytime and the day shift would picket in the nighttime. So they were drawing their weekly checks just the same. This got old and really discouraged the management.

"Another thing that was facing us was that we had been rather unsuccessful in controlling the labor situation. We had had quite a few strikes in the last ten years and the management of the company, Merritt, Chapman and Scott, who primarily had to approve the capital expenditures, had tremendous doubts whether under those conditions we would be able to come without 10 to 20 per cent of our projected cost.

"Another problem we had was lack of capital. We were in serious negotiations, and were still in those negotiations with Republic Steel at the time I left the company, that they put up the capital. They were a large potential user of coke in the South. Here again, Republic's objections, some of them were the known instability labor-wise. When New York had to pick or choose what they were going to do with their limited capital, say five, six or seven million dollars that they were going to spend in the next year to eighteen months, they thought they had a much safer in-

vestment investing in other than coal, so it was shoved off one year and was still held in abeyance when I left the company.

* * * * * * * * * *

2340 HERMAN I. ALLEN,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

* * * * * * * * * *

2351 CROSS EXAMINATION

By Mr. Rayson:

Q. Mr. Allen, some of these questions may be clear in the record that I am about to ask you, but they are not clear to me.

Referring to your Exhibit P232, do I understand with reference to the cost per ton as shown for the year 1953, which is $3.51, that this figure is net to the operator, small operator, or does it include any amount of royalty which the operator must pay to Tennessee Products?

A. Royalty has not been included or excluded from these figures. We paid the amount of money there for the amount of tons, then the royalty was paid to the company after that.

Q. In other words, out of this $3.51 it was necessary for the operator to pay or to have withheld, however you worked it, a certain amount as royalty?

A. That is right.

The Court: Now, gentlemen, I am confused. I understood him to say just the opposite to the question before and in this question he says that the $3.51 was gross paid and then a royalty was deducted from the $3.51.

2352 The Witness: Isn't that what you said?

Mr. Rayson: Well, it's my understanding—well, I don't know that I have any understanding at this point. I am about like your Honor. Of course, these are the questions that we asked Mr. Connelly yesterday.

Testimony of Herman I. Allen—Cross

The Court: Your $3.51, was that the amount that the truck operator actually received after the royalty was deducted or was that the amount which was paid to the truck driver and then a royalty deducted from the $3.51?

The Witness: The royalty would be deducted from the $3.51.

By Mr. Rayson:

Q. All right. Now, where in all of these papers can we find out how much royalty was taken out of this $3.51, have you got any papers of that sort, Mr. Allen?

A. We probably have, I couldn't say yes or *now* without going in and looking to see what we have.

Q. Well, are you familiar generally with the total amount of royalty that was charged these people?

A. Not for these years back here, no, sir.

Q. Well, are you generally familiar with the fact that the royalty, the total royalty ranged from 60 cents on some coal up to a dollar on some coal?

A. In some of these years, yes, sir.

Q. And that then would be the amount that would
2353 be deducted from whatever figure you show as cost per ton?

A. Yes.

Q. And then out of that dollar it would be necessary for Tennessee Products to pay the 17 cents to U. S. Steel, TCI?

A. Yes, sir.

Q. Well, is it not true that this deduction was by and large a bookkeeping transaction from the standpoint of Tennessee Products?

Let me explain my question in this way: Isn't it true that the truck mine operator for the year 1953 would not see the $3.50, he would hold it in his hand, he would have whatever was left after you deducted that royalty?

A. That is correct.

* * * * * * * * * *

2361 Mr. Owens: We will resume the examination of Carl McFarlin, Jr., which begins the cross examination of Carl McFarlin, Jr.

CARL McFARLIN, JR.

2362 CROSS EXAMINATION

* * * * * * * * * * *

2366 "Q. Will you explain to me the contracts which you made with the hand-loading truck mine that you referred to as the subcontracts? What was the arrangement you had?

"A. I am sure in the files there are copies of these contracts, but basically it was this: That we leased the coal to them, made all the parcels in the TCI lease a part of that lease by reference. The first contracts we had we retained the right of refusal to own all coal mined by them, and that a price to be fixed by mutual agreement from time to time.

"Q. What was the length of the contracts?

"A. I believe it was for one year and automatically renewable for one year periods thereafter, unless given certain notice.

"Q. Were any of them verbal?

"A. Some of them might have been verbal starting off, but were always reduced to writing some time later.

* * * * * * * * * * *

2367 "Q. And did Tennessee Products have the contracts for the sale of that coal?

"A. Most of them, yes.

"Q. How long did this type of operation, this sub-contracting, go on? It started some time, you said, during the war?

"A. That's right.

"Q. When did you make any change in that type of arrangement?

"A. Our first major change was made when the operators made the arrangement with the union for Tennessee

Products to withhold the royalty, the welfare royalty payments, from the new contracts, and at that time we started re-writing the contracts and relieving Tennessee Products of the part of the contract where we—in other words, in this we re-wrote the contracts so that the people that subleased the mines could go out and find their own markets and release control of the coal at that time.

"Q. When was that?

"A. It was about the same time of the '58 amendment to the National Bituminous Coal Agreement.

"Q. Wasn't there such an arrangement made in 1955?

"A. Not that I recall.

"Q. Didn't you testify on direct examination that there was a strike for a period of time in 1955 at the mines,
2368 and it was finally agreed that Tennessee Products would withhold the Welfare Fund royalty?

"A. I don't recall exactly the date, we did have a strike over this, and we did agree that we would withhold if the union supplied us with authorizations to withhold.

"Q. And you told them that thinking that you knew they wouldn't sign this authorization?

"A. We didn't think they would sign it.

"Q. Then later on, though, they did sign the authorizations?

"A. They gave us the authorizations.

"Q. Wasn't that in 1955?

"A. I don't exactly recall the date.

"Q. Then did you withhold the Welfare Funds?

"A. Yes, sir.

"Q. Did you pay it directly to the fund?

"A. Yes, sir.

"Q. For how long a time did you do that?

"A. We withheld that that they were not collecting from the union for a considerable period of time on new business. I don't want to get my words mixed up here because when you say 'the welfare' per se 40 cents a ton, only in

certain instances would we withhold 40 cents a ton, 35 cents a ton we withheld because the coal mines were paying 5 cents themselves. Then under subsequent agreement
2369 to pay only 20 cents a ton, we only withheld 20 cents, then 15 cents.

"Q. Now, let's go back to '55. They signed authorizations to you to withhold the full 40 cents on all new business; wasn't it from October, 1955, on?

"A. I don't recall now exactly how the authorization stated it, but the date is on the authorization, I am sure.

"Q. And you did that for a period of time?

"A. Yes, sir.

"Q. Now, what change did you make, what was the first change you made in your leasing and sub-contracting setup as a result of that?

"A. Number one, we released the coal, we starting changing contracts so as to relieve us of control of the coal, and allowing the other people to go out on a strictly royalty basis and sell the coal where they might. Now, this did not overnight change royalty contracts, but certain mines we did change.

"Q. As their other contracts with you terminated, then you made this change?

"A. Not necessarily so. Some of the contracts that were in existence we canceled out and substituted contracts, others ran out and new contracts we put in from time to time.

"Q. What was the change you made?

"A. I think we took out the clause—I have for-
2370 gotten exactly how it was worded, but we took out the clause where we had the refusal of the coal. We already had the agreement to withhold 40 cents on new government contracts.

"Q. All right. Why did you change your contracts then so you didn't withhold it?

"A. We didn't change our contracts so we didn't with-

hold it, as long as anything that we had control of the money on then we withheld it.

"Q. But you made the change so that you wouldn't have control of the money, isn't that right?

"A. We made the change because all the coal that we sold, we lived up to our end of our agreement to withhold all the welfare that we were supposed to withhold on new government contracts.

"Q. All right. Now, you made some change. Now, I want to find out what the change is, first, and why you made that change.

"A. Well, we made the change to let the men go out and find their own markets for the coal.

"Q. Why?

"A. Well, it was getting rather rough, and where one mine might be willing to work, to get his men to work for less, he could go out and get other markets, whereas a group they couldn't go out and get other markets.

"Q. Would there be any reason why you couldn't
2371 have that money paid to you and you continue to withhold the 40 cents?

"A. We just chose just not to. If they were to handle their sales and everything and get strictly royalty from it, then there was no need for us to handle all the bookkeeping and everything.

"Q. Now, when they did this, how about your royalty to TCI?

"A. We were always responsible for royalty to TCI.

"Q. How did you collect that?

"A. How did we collect that?

"Q. Yes, if they received the money from the coal, how did you get your royalty from that?

"A. It was paid to us by the mine operators.

"Q. What arrangements were made to insure that that would be paid to you?

"A. We had a slight club over their heads in that they

were operating on our property. That is the biggest arrangement we had.

"Q. Didn't you have actually some arrangement whereby it insured that you got it, even without that?

"A. I say that was the biggest reason. The coal was weighed on our scales, or on scales certified by us. I know the coal that went to Richard City, for instance, was weighed on the cement company scales there.

2372 "Q. TCI, as I understand, under your leasing arrangement, made you responsible for the royalty on all coal?

"A. Yes, sir.

"Q. Regardless of whether you sub-contracted it or not?

"A. That is correct.

"Q. Now, you say you began then paying 35 cents a ton?

"A. Yes. The operators were paying 5 cents a ton.

"Q. And you remitted 35 cents to the Welfare Fund?

"A. Yes, sir.

"Q. Did you, in making this, state the number of tons and multiply it by 35 cents and turn it in?

"A. I don't recall exactly how it was.

"Q. Or did you reduce the tonnage figure?

"A. It is possible that we reduced the tonnage figure.

"Q. And showed it as 40 cents?

"A. In other words, we showed it as the tons that we deducted it on, 5 per cent or the equivalent. Let's see, the equivalent percentagewise that they were paying, we just deducted on the tons that we were responsible for, the same way when we agreed that we would only pay the welfare of 20 cents a ton, or on half the tonnage percentagewise.

"Q. On the 35 cents, I am not sure that I followed you on that. Did you, in remitting to the Welfare Fund,

2373 show that you were only paying 35 cents a ton?

"A. That I don't know, as I stated, exactly how it was figured.

"Q. Actually, you altered the tonnage figures so as to make it appear to be 40 cents?

"A. That I don't know.

"Q. When, in fact, you were only paying 35 cents?

"A. We were only paying 35 cents in essence, how it was reported I do not know.

"Q. And how about the 20 cents?

"A. There again I don't know how it was reported, but we were only paying on either half the coal or 20 cents a ton, one or the other.

"Q. Why did you make this arrangement?

"A. To be competitive. Evidently we were able to sell the union that this was the only way or they would never have agreed to such a thing.

"Q. Was this change in the amount of money tonnage that you turned in made prior to this new leasing arrangement you made?

"A. Say this again.

"Q. You changed the leasing arrangement, you said, so that you didn't have any refusal on the coal?

"A. Yes.

"Q. Were the changes in the amount of money
2374 paid the Welfare Fund made prior to that date or after that date?

"A. That I can't tell you.

"Q. When you changed the lease so that you didn't have first refusal, did you still collect the money on the coal that was sold?

"A. If it was sold directly by them, no, sir.

"Q. Well, suppose it wasn't sold directly by them?

"A. If we sold it, yes, we collected it. If they sold it through other agents, before we would agree to it being sold through an agent, we would be sure that the agent withheld our royalty from that.

"Q. Well, who did they sell it through, the other agents?

"A. Tri-States Coal, I believe, sold some. Jim Miller

as an agent, sold some. There were two or three agents that they did sell coal through.

"Q. Who is Tri-States, by the way?

"A. Well, they are a coal sales agency.

"Q. Who owns Tri-States?

"A. I don't know. At the time I did, but it has slipped my mind."

Mr. Owens: Mr. Rowntree interjects, "Studer."

"Q. Studer Brothers. Were they coal operators also?

"A. At times they have been.

"Q. Now, what arrangements did you make for 2375 them to collect your royalty?

"A. Well, we made several arrangements with several people but in general—

The Court: This is a practice fire alarm. I don't think that it will take time to observe it. As soon as the alarm ceases we will proceed with the trial.

"Q. Now, what arrangements did you make for them to collect your royalty?

"A. Well, we made several arrangements with several people, but in general it was that they would deduct for us the price of the coal and the royalty for the coal that we had set up on the mine selling for their contract. They would remit to us. They took the other money and remitted it to the operators.

"Q. I think that an exhibit that you put in shows that the operator executed an assignment, didn't they, the Tri-States Coal Company?

"A. Tri-States, yes.

"Q. Also Tri-States then authorized the bank to pay you, some arrangement to that effect?

"A. They might have, that might have been the arrangement.

"Q. Did you include then that they do that, to pay the Welfare Fund the 40 cents a ton?

"A. I declare I don't remember.

2376 "Q. Wouldn't that have been a good way to insure that they pay that?

"A. Well, we weren't interested in insuring it, it was the union's job to collect that after we relieved ourselves of the responsibility.

"Q. As a matter of fact, that's why you made the arrangement, so they wouldn't have to pay it?

"A. That's only conjecture on your part.

"Q. Well, isn't that why you did it? Wasn't that part of your consideration?

"A. That was one of the considerations, yes.

"Q. Now, getting back to the truck mines, the handling of the truck mines, why didn't Tennessee Products operate these mines?

"A. Many, many, many reasons.

"Q. What is the main one?

"A. Number one, supervision; number two, they were essentially small operations, some of them had to be hand-operated, and for us to go in and operate them, we had to have a man that was something of mine foreman caliber that could operate the mine and take care of all of the little details; could actually run a tractor.

"Q. Do you mean you couldn't hire mine foremen?

"A. Sure, you could hire mine foremen.

"Q. Didn't you have more control of them that way?

2377 "A. For each mine foremen you've got to have one general foreman; for each general foreman you've got to have a superintendent; for each superintendent you've got to have a general superintendent; it just multiplies and multiplies and multiplies. All we are doing is bookkeeping.

"Q. How about the truck mechanized mines that came in?

"A. What about them?

"Q. Why didn't you operate those mines?

"A. For the same reasons, they were all small blocks of coal. We had enough trouble operating one mine.

"Q. What about the Holly Branch Coal Company, what was that?

"A. That was a partnership, as I recall, of several of the truck mine operators.

"Q. Who was in the partnership?

"A. I don't recall. Those mines were up Holly Branch there, quite a few of them, maybe 8, 10 or 12 mines.

"Q. Did the partnership sell the coal?

"A. Yes.

"Q. Did you have the same arrangements with them as far as the royalty to Tennessee Products?

"A. As I recall, it was assigned to us by TVA. They gave TVA an assignment to assign so much of the money to us, as I recall.

2378 "Q. How about the Mount Olive Coal Company?

"A. The same.

"Q. Now, what's the Red Blaze Coal Company?

"A. It was just a method of keeping two bank accounts separate.

"Q. What do you mean by that?

"A. All of the Daus coal and everything. Red Blaze was Tennessee Products. There was a bank account called Red Blaze Coal Company, but it was Tennessee Products. All of our Daus operations were paid through the Red Blaze account.

"Q. What about the other operators, Daus, and what do you call the other, Whitwell?

"A. Whitwell.

"Q. How were they paid?

"A. They were paid by Tennessee Products checks.

"Q. Did you have any complaints from TCI about the royalty on the coal, whether they were getting the full amount of the royalty?

"A. They always sent their engineers in once a year to get a survey and they had certain guide lines provided by surveys that they had, and if our reports were reason-

able they would say, 'You came up over,' or 'You came up short.'

"Q. Didn't they finally complain to you that they weren't getting the full royalty from some of these truck mines?

2379 "A. No, sir, I don't think so. They complained about coal being stolen, but that was an annual complaint. They had a man on the property also to check on this situation, and undoubtedly some coal was stolen from them from time to time.

"Q. Didn't you have a number of leases that you canceled immediately after Mr. Human came in?

"A. I don't know. I wasn't there when Mr. Human came in.

"Q. What was this arrangement that you had with Woody Travis about ownership of the mines?

"A. Well, the mines were given to Mr. Travis because of his good work in building up the company.

"Q. When did you give him this?

"A. I didn't give it to him, my father did.

"Q. Well, your father, when did he do this?

"A. Well, at various times when we would open different blocks of coal. The original one was, I guess, in '45, or somewhere in that neighborhood.

"Q. Was this in writing, by the way?

"A. He had contracts, yes, just like anybody else.

"Q. All of the time he had a contract for any mine that he had an interest in?

"A. Not necessarily. He had an interest in some mines where he would put the equipment in the mines,

2380 which we were aware of. He would finance them.

"Q. Did he sign these contracts for Tennessee Products as his mines, as the owner himself?

"A. I signed most of them, myself.

"Q. Did he sign any of them?

"A. He would sign any of the contracts that they had, then I would approve and sign them.

"Q. For Tennessee Products?

"A. Yes.

"Q. Well, did he sign as operator of this mine?

"A. On some of them he or his partner would. Mr. Travis, I don't believe, had any mines later on that he didn't have a partner in with him, and his partner did all the negotiating.

"Q. He was not listed then as an operator of any of those mines until after he was fired, is that right?

"A. Then he went out and was specifically given mines and bought in the mines.

"Q. Then he was not a silent partner any more?

"A. That's right. He was not silent as far as the company was concerned.

"Q. Wasn't there some objection to this arrangement, having an interest in these mines?

"A. No.

"Q. Wasn't an investigation made of him?

2381 "A. Not that I ever heard.

"Q. You never heard of an investigation being made of Woody Travis' management of these mines and his interest in them?

"A. I remember one time an accountant thought that he had uncovered some foul play, but when it came back it was that Woody had an interest in these mines that top management knew about anyhow.

"Q. And you explained that to Mister—was it a man named Icenhour?

"A. No, I never explained anything to Mr. Icenhour.

"Q. Well, didn't you go to him and explain that he had an interest in these mines properly and you knew about it?

"A. I possibly did. If I did, I don't recall it.

"Q. Didn't you know that that was what he was trying to find out when he was down here?

"A. This is not the accountant that I was talking about, the first one.

"Q. Oh, I am sorry. How about Mr. Icenhour?

"A. Mr. Icenhour was from Merritt, Chapman and Scott.

"Q. Well, was he down here investigating this?

"A. Mr. Icenhour never let anyone know what he was investigating.

"Q. You didn't know what he was investigating?

2282 "A. No.

"Q. You never heard from anybody?

"A. No, I didn't. He was very silent.

"Q. Nobody made any reports to you as to what he was finding out?

"A. Sometimes I would get by the grapevine what Mr. Icenhour was doing.

"Q. One of those grapevine reports was that he was investigating whether Mr. Travis had an interest in any of these mines, wasn't it?

"A. If he had come and asked me I would have told him, but I don't know if he did.

"Q. You didn't tell him whether he did or not?

"A. I don't recall it. I don't know if I told him he did or if I didn't.

"Q. Did you make any report to Merritt, Chapman and Scott as to his interest in these mines?

"A. That I don't recall either.

"Q. Isn't it true, Mr. McFarlin, that he was taking a kickback on all these and waited until after he was fired and he finally came into his own?

"A. That is not true; that is not true.

"Q. As a matter of fact, didn't you file a report here of all the operators and their names at the time and had a regular list of them, of mines that they operated,

2383 and Woody Travis' name was not mentioned in a single one?"

Mr. Owens: Mr. Rowntree says, "To what report are you referring, Mr. Owens?"

I said, "Let him answer."

"A. We filed lots of reports, but I don't remember a report with that in it.

"Q. As an exhibit to your testimony, didn't you file some kind of a report that showed the number of the mine, the name of the coal company and the operator that operated it?

"A. If you say I did, I possibly did, but it has been a month or so. Would you care to show me the report and I will refresh my memory.

"Q. That is Exhibit 15 to your deposition."

Mr. Owens: That is Exhibit 215 in this record.

"Q. Do you remember that?

"A. This thing is one of our reports.

"Q. Do you recall seeing this Exhibit 215?

"A. Yes, sir, but I don't recall its contents.

"Q. Then there is another one that goes on and gives a long list of them?

"A. Yes, sir, I recognize them.

"Q. Isn't it true that Mr. Travis was not listed as being the operator in any of those reports that you made?

"A. That's correct, but that doesn't alter the 2384 situation. There were a lot of people that were in mines with other people that are not listed.

"Q. Was anybody else that was not listed that was an operator in connection with Tennessee Products?

"A. No, sir, not that I know of.

"Q. Do you know why Mr. Travis was discharged?

"A. No, sir, I do not. He was discharged at the same time I was.

"Q. At the same time?

"A. On the day before.

"Q. Do you know the reason why he was discharged?

"A. No, I didn't even bother to ask after I was discharged.

"Q. You never talked it over with Mr. Travis afterwards?

"A. Oh, I talked it over with Mr. Travis several times afterwards.

"Q. Does he know why he was discharged?

"A. No.

"Q. Getting back to something else that's in your direct testimony, what negotiations did you participate in, or what collective bargaining negotiations did you participate in prior to 1958 with the International Union?

"A. Directly?

"Q. Yes.

2385 "A. None.

"Q. How did Tennessee Products negotiate?

"A. I had several meetings with the local representatives, but as far as national I had none. In fact, Tennessee Products and the national never negotiated.

"Q. Well, did they belong to the association?

"A. They belonged to the East Tennessee Coal Operators Association.

"Q. Southern Tennessee Coal Operators Association?

"A. Southeastern, I believe it was called, maybe the Southern Tennessee.

"Q. Is that the one that—

"A. Mr. Hampton was the president."

Mr. Owens: Mr. Rowntree says, "Southern Tennessee Producers Association."

"Q. Mr. Hampton carried on the negotiations?

"A. Yes, sir.

"Q. For both of the companies?

"A. Yes, sir.

"Q. And what was the other company, wasn't there another one, Whitwell?

"A. Whitwell Coal Company.

Deposition of Carl McFarlin, Jr.—Cross

"Q. There were three companies?

"A. Yes.

"Q. In 1950 what was your job with the company?

2386 "A. In 1950 I believe I was chief engineer, in '50.

"Q. Well, as chief engineer you wouldn't have knowledge as to what Mr. Hampton did in the negotiations?

"A. Not necessarily.

"Q. How long did that arrangement continue with Southern Tennessee Coal Producers Association?

"A. At the time I left it was still going.

"Q. Didn't you then negotiate directly with the union over the 1958 amendment?

"A. Yes, we did with Mr. Lewis. I wouldn't go so far as to say it was negotiations; we stated our case and he told us exactly what his case was and we came home and authorized Mr. Hampton to sign on our behalf.

"Q. But up until that time you hadn't been in any of the negotiations?

"A. National negotiations, no.

"Q. Who was your competition before 1960? Who were your coal competitors?

"A. Oh, we had considerable coal competitors. Those in our area: Tennessee Consolidated, for one, was our largest competition locally, and then the West Kentucky field was our other competition.

"Q. Were you in competition with Ramsey Coal Company?

"A. Yes, we were in competition with Ramsey.

"Q. Any other independent operators?

2387 "A. At various times, Sarabna"—

Mr. Owens: It's "Serodino."

Mr. Rayson: Sarabena?

Mr. Owens: No, Serodino.

Mr. Rayson: Well, I am unable to spell it from this.

The Court: (Spelling) S-e-r-o-d-i-n-o, a barge company.

"A. (Continuing) —was in competition with us for a

while; Griffith and Goforth for a while. Of course, they were relatively small tonnage mines, small potential tonnage mines compared with Tennessee Consolidated which we considered our biggest competitor.

"Q. You didn't consider your truck mines your competitors, did you?

"A. No, they really weren't our competitors, because we couldn't mine coal as cheaply as they could, so there was no competition there at all. We were selling primarily to ourselves.

"Q. How did you regulate your price of coal that you sold to yourself?

"A. We based it on competitive coals that were delivered to our coke ovens, coals that would do the same thing coke-wise. In other words, if we had to negotiate outside the field to buy our coke.

2388 "Q. Did you say you were making more money on your small mines than you were on your large mines?

"A. Yes. In other words, if you are losing money on one, if you are making any, you are making more, I would say.

* * * * * * * * * * *

"Q. Did you negotiate the new freight rate for your mine with the L&N Railroad some time in 1958, or was it in '53 first?

"A. Fifty-three. I was in on the negotiations but it was not with the L&N Railroad; it was with the NC&St.L that served us, which was not at that time part of the L&N.

"Q. You say it was in 1953?

"A. I'm not exactly sure when that rate was negotiated.

"Q. Was it around that time?

"A. Somewhere in that neighborhood.

"Q. What was the rate change?

"A. The rate change was, as I recall, from 90

2389 cents a ton at Whitwell, 99 cents a ton at Reel's Cove,

to 60 cents a ton at Reel's Cove and Whitwell, and 65 cents a ton at Daus it might have been $1.09 for Daus, it was somewhere in that neighborhood.

"Q. Did you participate in those negotiations for a new freight rate with Tennessee Consolidated Coal Company?

"A. No, sir.

* * * * * * * * * * *

"Q. Weren't there two rates negotiated, two Section 22 rates negotiated, one in 1960, which involved the West Kentucky field, and then wasn't there one prior to that that involved Tennessee Products?

"A. Yes, that was Tennessee Consolidated. Yes, sir, that was the rate I was in the negotiations with.

"Q. Now, the first one, wasn't Tennessee Consolidated in that, too?

"A. They were not in the negotiations.

"Q. They negotiated separately with the L&N?

"A. I guess you would call it that.

"Q. Now, did you discuss this rate with TVA prior to the time you discussed it with the railroad company?

"A. Yes, sir.

"Q. After you discussed it with the railroad then
2390 who took it up with TVA?

"A. I assume the railroad did.

"Q. And then you did receive this rate change?

"A. Yes.

"Q. Wasn't there subsequent to that a change in that rate?

"A. Not that I recall.

"Q. One thing I meant to ask you about the Red Blaze Company, going back to that for a minute. Did the Red Blaze Coal Company remit to the Welfare Fund whatever tonnage they were supposed to?

"A. As far as I recall, anything that Tennessee Products agreed to do, Red Blaze was part of Tennessee Prod-

uets, it was just exactly the same thing. It did not remit under the name of Red Blaze. Red Blaze was just a bank account.

"Q. Was the formation of these companies, or the changes in the leases that you made in the contracts, done also because of the difficulties you had with the Wage and Hour Division of the Labor Department?

"A. That had some influence on it, yes, sir.

"Q. When did this occur?

"A. I would say it started in 1956, approximately, and continued on through '60.

"Q. You were aware of these violations by these 2391 mines—sub-contractors?

"A. What violations are you speaking of?

"Q. The violations of the Walsh-Healey and Public Contracts Act.

"A. Well, I never agreed that they were violations.

"Q. You never agreed to it?

"A. No, I didn't personally.

"Q. Did you know they were violations?

"A. I didn't think they were.

"Q. You thought they were paying the rates?

"A. Yes, sir.

"Q. Did you subsequently learn that they were not?

"A. With the good offices of Mr. Lansden here we agreed to compromise, but we never agreed that they were violations.

"Q. Did you ever read the record that they had in the case of Nunley versus East Valley Coal Company?

"A. I have read several records, we had nothing to do with East Valley Coal Company.

"Q. Did you know that they had also not kept the proper records of money that was to be paid to their employees?

"A. Well, there again, they said that the records were not proper. Just to what extent they were not proper and

what was not proper was never proven to me, but we agreed to insist on better records with the Walsh-Healey
2392 people or the Labor people.

"Q. Didn't they actually show that they had falsified the records in order to cover up?

"A. No. They put one and five together and came up with four. In other words, they were using the wrong premise to figure these things. They assumed that a man worked eight hours a day and they said, 'Here's the money the man received, divide it by eight,' and we knew and everyone in the field knew that the men weren't working eight hours a day.

"Q. How about the falsification of the records as to where the coal came from. They even had that, didn't they?

"A. I don't believe that I ever recall anything about that."

Mr. Owens: Skip down to Line 25.

"Q. Why did you agree to pay money to them if they weren't violations?

"A. It was a matter of compromise that we agreed to pay them.

"Q. You were afraid of being blacklisted, actually, and that Merritt, Chapman and Scott would be blacklisted?

"A. That was one of the clubs that was held over our heads, guilty or not guilty. I found out right quick that that was not a court of law.

"Q. Getting back now to the strikes you say you had. You say you had one in 1955?

2393 "A. I don't recall exactly how many we had, but we had one or more.

"Q. That was a long one over the signing of the new contract at that time?

"A. That's right.

"Q. And also an attempt to insure payment of the Welfare Fund, the full 40 cents?

"A. Yes.

"Q. And when was the next dispute you had after that was settled? Did you have one in 1956?

"A. I am sure we did, it was another year.

"Q. What was that one over?

"A. That I don't know, but one can rest assured that we had disputes at least once a year, sir.

"Q. Didn't you have a dispute over that on the failure to pay some of the increases that were due after that time?

"A. You state the question like they were due.

"Q. Well, whatever was due.

"A. I don't exactly recall. Yes, I am sure that we had quite a few strikes over whenever there was an escalation clause and the division of that escalation between the mine operators, the truckers, and things of that sort. There was always some question about that.

"Q. Well, didn't you have a strike in April of
2394 1957 for the failure of these small operators to pay an 80 cents increase in wages that were due at that time?

"A. That I don't know.

"Q. And didn't you also have strikes for failure to pay the vacation pay in these small mines?

"A. As I recall, the price per car covered vacation and everything was figured into the base rate. These men were on a tonnage basis.

"Q. Was the vacation pay based on a tonnage basis?

"A. It was figured in the tonnage rate, as I recall, yes, sir.

"Q. Didn't they actually have a dispute over it, that it wasn't paid, and they made an agreement then that they would then pay $11.67 per month in order to make up that vacation pay?

"A. That I don't recall.

"Q. You don't recall anything like that?

"A. No, sir, I don't recall paying $11.67. By whom was it paid?

"Q. To the employees.

"A. I mean by whom?

"Q. By these small coal operators, truck mine operators.

"A. Of course, they were independent operators themselves.

2395 "Q. You weren't interested in those mines being shut down?

"A. Oh, yes, we were, but we couldn't solve all their problems.

"Q. Well, actually, didn't you participate in the negotiations?

"A. Me, personally?

"Q. Yes.

"A. No.

"Q. Didn't Tennessee Products?

"A. Possibly. We were always kind of the middle man, the arbitrator, and tried to help these people work out their difficulties.

"Q. That's right. And you were vitally interested in getting them worked out, weren't you?

"A. Oh, yes. If you are selling coal for somebody, you would like to offer your good offices and would certainly do this.

"Q. You had a direct financial interest in these mines and you were receiving a royalty from them for the coal?

"A. That's correct.

"Q. And you had the contract for the sale of it, didn't you?

"A. That is correct.

"Q. And you were vitally interested in seeing 2396 those mines operate?

"A. That is correct.

"Q. So you had Mr. Travis and Mr. Daffron and others sit in on the actual negotiations for a settlement of these grievances?

"A. Yes.

"Q. And didn't it come to your attention that those grievances were over the failure to pay a certain increase in wages?

"A. Not everything that went on in those meetings always came to me.

* * * * * * * * * *

"Q. Well, I doubt that everything that went on, but it did come to your attention that there were strikes that were for failure to pay the wages?

"A. That's right.

"Q. And that they were also over failure to pay the Welfare Fund, and that they were seeking ways and means to insure that their 40 cents a ton was paid, and they wanted you people to do it?

"A. There were many times that we withheld the Welfare Funds.

"Q. They were demanding the same thing that
2397 TCI was demanding to see that they got their 40 cents?

"A. Not necessarily so.

"Q. Or whatever their royalty was. TCI had that in their contract, didn't they?

"A. TCI had faith in the financial responsibility of Tennessee Products.

"Q. And that's what the Mine Workers wanted to have faith in you people and have you pay that 40 cents?

"A. Our contract was with TCI.

"Q. That's right. That's on your royalty.

"A. These other operators had contracts with United Mine Workers.

"Q. You also had contracts with those other operators, too, didn't you?

"A. That's right, but the two can't be tied together and we didn't think so.

"Q. How about the vacation pay, too? Didn't they have strikes over the failure to pay the vacation pay?

"A. I don't recall offhand. They possibly have had all these strikes. You have researched a little bit more than I recall. But I would say that this could be brought up and you would have a strike, regardless of whether the deal was made on a ton basis or not. The people over there would spill their water and, like I pointed out, they'd all go home. So it was that type of situation. They had
2398 strikes over lots of things. And sometimes the things that they had strikes over never came to the surface.

"Q. But just as soon as there was one of these strikes, you found out about it, didn't you? Didn't you try and find out what it was about?

"A. Well, sometimes it would be a week before I would think I knew what it was about.

"Q. You found out they were striking?

"A. I knew they were striking.

"Q. Wasn't there also a strike in November and December of 1955 because of the failure to put in the $1.20 increase?

"A. Possibly there was.

"Q. And also the failure to pay vacation payments?

"A. Well, it was continued, it was not put in because there wasn't enough people that wanted it, that's the reason they had a strike.

"Q. The men claimed that they weren't getting this money, didn't they?

"A. That's right, and the operators claimed they were.

"Q. They claimed it was all in the tonnage rate?

"A. Right.

"Q. And the Mine Workers claimed that it wasn't, that they had an obligation under their written agree-
2399 ment as to how that was to be paid?

"A. Of course, they went on past practices.

"Q. Now, in the 1955 strike didn't Tennessee Products

actually change the amount of money that they were paying to coal operators for the coal in order to cover that increase and cover the vacation pay?

"A. We did increase something like 20 cents, we did increase the operators, I believe, about 3 cents a ton more than we got from TVA.

"Q. This was in 1955?

"A. Yes, sir.

"Q. Didn't some of the operators claim that that amount of money was not enough to cover it, and they cut their mines down for a long time?

"A. Possibly.

"Q. When did you start the program to mechanize, put in small mechanized mines?

"A. That started with the Shook and Thomas mine in Griffith's Creek. I would say it was in '58, it could have been '58 or '57. That was the first mechanized mine we had.

"Q. You had decided to put in the mechanized mines and close out the hand-loading mines if they worked out?

"A. As soon as they could work them out.

"Q. I notice that in some of the exhibits that you put in the record, talking about completing these mines,
2400 'whenever they complete these mines.'

"A. Yes, sir.

"Q. And that's what you meant, whenever they worked them out?

"A. When they worked them out, that's right.

"Q. And what blocks of coal would you say Shook and Thomas and the other mechanized small mines had?

"A. Oh, the Shook and Thomas was the Reel's Cove lease working the area that couldn't be reached from the panels off of the Cove's right, and between there and the Lucinda Palmer tract."

Mr. Rowntree said, "Griffith's Creek No. 1."

"A. And also had under their lease a strip going up the north and west side of the Lucinda Palmer tract to work

out a strip of coal that was between the Lucinda Palmer tract and the tract of Tennessee Consolidated which, as I recall, was some five or six hundred feet wide.

"Q. Where is this in relation to the Reel's Cove Mine?

"A. It is at the very back of the property, opposite the Reel's Cove Mine entry.

"Q. What was this you said something about this was adjacent to the next right or something?

"A. No, it is the coal west of the third right main entry off of the No. 2 Reel's Cove main, which could not
2401 be recovered from the third right entry, between there and the property line which is called the Lucinda Palmer tract."

* * * * * * * * * *

"Q. You had plans to start—

"A. We started Shook and Thomas in there to recover this coal that we couldn't get with our method of mining. Also included in this lease was property to the north and west of the Lucinda Palmer tract, which was bordered on the west by Tennessee Consolidated, by Lucinda Palmer on the east, which was a strip of coal five to six hundred feet wide and possibly 6,000 feet long.

"Q. How many of these mechanized truck mines did you actually get started?

"A. Well, at Griffith's Creek we started five, then at Daus Mountain we had six or seven.

"Q. And they actually got started?

"A. They got started, yes, sir. Then we semi-mechanized, I believe, where one mine—I don't recall if we started that mine or not, but we leased it out, over in the strippet where old No. 1 cut out, but one mine in there was going to be mechanized. I don't know whether it was ever completed or not.

"Q. I want to find out the names of those small
2402 mechanized mines. Paul Gibbs didn't operate one of them, did he?

"A. I don't think he did.

"Q. How about J. H. Graham?

"A. Graham, he had a motor-operated mine, but he did not mine with mobile equipment, as I recall.

"Q. What about Marshall Meeks?

"A. He had a mechanized mine.

"Q. W. T. Morrison?

"A. W. T. Morrison, I don't believe he ever had a mechanized mine. He possibly had battery locomotives, or something of that sort.

"Q. Edward Nunley?

"A. Edward Nunley, I think he had a mechanized mine.

"Q. Leon Nunley?

"A. Possibly he had a mechanized mine, or it might have been partly mechanized.

"Q. Stephenson Brothers Coal Company?

"A. I believe they had one at Daus.

"Q. Homer Studer?

"A. I don't remember him having a mechanized mine. He was an independent.

"Q. Tracy City Coal Company?

"A. I believe they had a mechanized mine.

"Q. Was it mechanized or semi-mechanized?

2403 "A. I couldn't tell you. If I could see a map that would show me the location, I could tell you which ones were mechanized and which ones were not.

"Q. A and R Coal Company?

"A. A and R, I don't remember. Have you got the number of the mine?

"Q. No, I don't have that. How about the Ninth West Coal Company?

"A. It had locomotives, it was not mechanized.

"Q. Stephenson Coal Company, is that the same as the Stephenson Brothers?

"A. It could possibly be two different mines.

"Q. Now, what was the difficulty that they had when they opened up those mines with the employees?

"A. Well, originally they didn't have any difficulties.

"Q. Wasn't there a question of seniority when they came in there?

"A. Not originally, but it came, oh, I would say a year after or possibly a little longer, that Reel's Cove Mine started demanding seniority in the mechanized mine.

"Q. That's when Reel's Cove started to having some layoffs?

"A. No, I don't think so, except that some of the men had quit Reel's Cove and had gone into mechanized
2404 mines.

"Q. What happened when they had the dispute there about seniority? Tell us about that.

"A. Well, as I recall, the Reel's Cove men would go over and put out a picket line. The off duty Reel's Cove men would go over and put out a picket line on the road going into Griffith's Creek and hold those mines down, and they would have a shift change and the off duty men would replace the men that had to go on duty, and they kept the mechanized mines in Griffith's Creek down, as I recall, for months.

"Q. Why were they doing it, to get the jobs at these mines or to keep their mine operating?

"A. They were cognizant of the fact that Reel's Cove was eventually working out. In other words, in the superintendent's office there is a plat plan of the mine and they could see what was left to be mined and say, 'and maybe a year or 18 months our jobs will be gone.'

"Q. They were trying to secure employment in these mines for insurance that they would be employed when their mine worked out?

"A. Yes. They even discussed that with Mr. Lewis in Washington.

"Q. And the company didn't want that to occur?

"A. We didn't want our men going over and picketing the independent contractors, not that we had any—
2405 we could see that the Reel's Cove men took this attitude and the independent contractor said, 'I am not going to have them.' He'd say, 'I'm not going to take the most senior men off of your panel and put them in just because he's senior at Reel's Cove. To heck with you.'

"Q. Didn't you represent to TVA that these mines were actually financed and controlled by Tennessee Products?

"A. They were supervised by us. We furnished supervision, we assisted in the financing of some of them.

"Q. Assisted in purchasing equipment?

"A. We assisted them in locating equipment.

"Q. Did engineering work for them?

"A. Yes, did engineering work for them.

"Q. Helped build roads?

"A. Helped them build roads, faced up facings.

"Q. And sold the coal?

"A. And sold some of the coal.

"Q. So that you had a little more interest than just what the attitude of some independent operator was going to be?

"A. They had the right to sell the coal and did sell coal outside.

"Q. As a matter of fact, you had a direct interest that you wanted to insure that these men didn't get these jobs because they were too old to operate this machinery?

2406 "A. That's an assumption on your part.

"Q. You didn't have any recommendations from Mr. Travis to you that this was what you wanted to accomplish?

"A. When we were contemplating opening the Morganville Point Mine, we had many discussions along this same line, that the men we had at Reel's Cove, some of the men, were too old to work on mechanized equipment, mobile equipment.

"Q. And you wanted to insure that they would have younger men operating these smaller mechanized mines?

"A. That was not my jurisdiction. The operators had to hire their own men, we didn't hire men for them.

"Q. You didn't even do anything to insure that these men wouldn't get these jobs?

"A. How could we?

"Q. You had complete control of them.

"A. We were not in complete control of them.

"Q. Didn't you receive a memorandum from Mr. Travis to that effect, that this was what you wanted to insure did not occur?

"A. Certainly something we had rather not see happen was that Reel's Cove seniority be carried over to somebody else, and the only way it could have been done was through negotiations where the independent contractors would agree with the union, we already had our local at Reel's Cove.

"Q. Why did you object if the seniority was car-
2407 ried over to some independent operators?

"A. Well, we happened to know some of the men that we had at Reel's Cove and we knew their age.

"Q. Yes, but it wasn't your operation. Why did you care?

"A. But we did supply them with supervision, we could give them our best recommendations.

"Q. I know you could, but you said you didn't care?

"A. We possibly did.

"Q. You did. Wasn't it actually you found that these men were too old, that they had reached an age of 60 years or more and that they needed younger men in order to carry out the increased activities?

"A. That was definitely our thinking.

"Q. Well, that's what I asked you a little while ago, if Mr. Travis didn't recommend that, and that that is one of the things you took up with Mr. Lewis, that you didn't want to have this seniority carried over?

"A. That is correct. We didn't specifically talk about mechanized mines, but we talked about them in our new opening with Mr. Lewis.

"Q. You testified you told him that you were closing out your hand-loading mines and opening up these mechanized mines, these small mechanized mines, and that you had to do this to increase your productivity. It was
2408 even under your contract at that time with TVA, wasn't it?

"A. Yes.

"Q. And that you wanted to insure that those mines continued to operate and that you had to have younger men?

"A. That's right."

Mr. Owens: Over to 50.

"Q. Now, these men that were working for you at the Reel's Cove Mine thought that they should obtain this employment, is that right?

"A. Yes, sir.

"Q. And they felt that they were physically able to mine the coal?

"A. No, they felt that they had seniority, and regardless of their physical condition they were demanding that they be handled in such a way that the oldest men would get first choice.

"Q. They were afraid if they didn't they would be cut out of a job?

"A. That's possible.

"Q. And there wasn't any other employment in the area, was there, to speak of?

"A. There was other employment.

"Q. Yes. But isn't coal mining the predominant industry in that area?

"A. It is, yes.

2409 "Q. And that a man 60 years old could have difficulty getting a comparable job if he were laid off at that time, or even 50 years old?

"A. That is possibly true.

"Q. And, as a matter of fact, that you people didn't want to continue their employment?

"A. For the jobs that they were doing, they were suitable.

"Q. You felt that younger men were needed to develop these skills in using these machines?

"A. That's correct.

"Q. Now, also, how about the truck line employees? Didn't they have some picketing of these mines?

"A. They possibly did.

"Q. They felt that the mechanized mines were going to put them completely out of business?

"A. I can't testify exactly what they thought, but they could have thought that.

"Q. Didn't they report that to you, tell you that?

"A. Not that I recall.

"Q. You had no reports that the truck miners, the hand-loading truck miners were fearful of being displaced by these mechanized mines?

"A. A fellow that operated a mechanized mine and also a hand-loading mine had some difficulty due to the
2410 men at his hand-loading mine wanting to go to his mechanized mine.

"Q. And he didn't want them to do it?

"A. He didn't want them.

"Q. Who was this?

"A. I don't recall, I believe it was Marshall Meeks.

"Q. Didn't the truck miners actually picket at the mechanized mines also?

"A. In June, I think it was Reel's Cove men that were doing the picketing.

"Q. How about the truck operators themselves, the hand-loading operators, didn't they also picket these mines?

"A. Not that I recall.

"Q. Did you finally work out an agreement in regard

to seniority of the Reel's Cove employees dated June 20, 1959?

"A. Possibly we did.

"Q. Mr. McFarlin, you made a part of your deposition a memorandum from Travis to Carl McFarlin, Sr., of which you received a copy, which set forth bids in 1958, 'Net to Tri-States, $4.49', to pay the operators $3.60, 89 cents difference between the two. The memorandum says, 'Pay Tennessee Products insurance 12 cents, dock fee 10 cents, royalty 47 cents' for a total of 69 cents, and says, 'Return 10 cents per ton to the chairman of the partnership at the end of each month.' What is meant by that?

2411 "A. That 10 cents was to carry on the general business of the partnership.

"Q. This was Tri-States. Now, was that a partnership, too?

"A. Tri-States was a sales agent.

"Q. 'Return 10 cents to the chairman' of what partnership?

"A. I don't know if it was either Holly Branch or Holly.

"Q. Well, who was the chairman, do you know?

"A. No, sir, I don't recall.

"Q. Of either one of them?

"A. No, sir, I don't recall.

"Q. It says the 10 cents to be paid to the chairman of the partnership is for the Miners' Welfare Fund.

"A. May I see it?

"Q. Yes. That is what it says.

"A. I don't know exactly what he is talking about there. I remember there was some talk at the time of the general business of the partnership, how it was going to be financed.

"Q. Well, in that situation you had coal operators, whoever it was, receiving a certain price, and you had the partnership receiving a certain part of the price?

2412 "A. Yes.

"Q. Then you had Tri-States receiving a certain

amount of that, and then you had Tennessee Products
ceiving a certain amount of it, and then TCI, off of the
of each ton of coal?

"A. Yes.

"Q. How about the trucking of it, how was that don

"A. It was in the price of the coal to the operator.

"Q. Well, at one time didn't you have a long str
over how much the truck drivers or the truck operat
or whatever you call them—did you call them haulers,
what did you call them?

"A. Coal haulers, truckers, and lots of other things, t

"Q. Over how much they were to receive?

"A. Oh, yes, at times there were misunderstandings
tween the coal haulers, and there was misunderstandi
between the operators and the coal haulers.

"Q. Then there was a long strike during this period
time, wasn't there, fairly long, over how much they w
to receive?

"A. There was a strike over that. Yes, that was d
to an escalation by TVA, and the division of that esca
tion.

"Q. How long did that go on?

"A. I don't recall.

2413 "Q. And also in there there was an agreeme
wasn't there, that certain foremen were to be pa
out of money that was withheld?

"A. Yes.

"Q. What was that? I don't understand that.

"A. That was for the supervision. We put certa
foremen that were at one time Tennessee Products e
ployees that we put up there to supervise for us and f
them, these operations. They were training men, they we
men that act more or less as consultants and engineers f
these various mines.

"Q. Were they employees of yours or employees of t
coal operators?

"A. As I remember, they were part employees of ours and part employees of the coal operators.

"Q. Well, why wouldn't they pay them directly?

"A. Why would they not pay them directly?

"Q. Yes. Why did you have this arrangement?

"A. Well, we were subsidizing, you might say, to a certain extent their pay.

"Q. So in addition, you got your royalty, you got a docking fee, was it?

"A. Yes.

"Q. And then they paid the insurance and part of the foremen and part of the supervisors?

2414 "A. Yes.

"Q. Did they make any other payments to you? Were there any other payments or any other costs that were paid to Tennessee Products?

"A. Not that I recall. We got engineering, but I think that was all in the—there was an engineering charge, a loading and weighing charge. I think that covered all of it.

* * * * * * * * * *

2417 "Q. In your memorandum of November 14, 1958, to Mr. Travis, you have under Whitwell prices: 'At one time we had five or six prices we were paying for Whitwell coal, but due to market conditions and also the fact that we will not sell any more Whitwell hand-loaded coal on government contracts, I made all the prices the same.'

"What did you mean by that?

2418 "A. That is from Mr. Travis to me.

"Q. It's a memorandum from Mr. Travis to you. It is part of Exhibit 215 in this record. What is the explanation you have of that?

"A. I don't understand what that is. Offhand, I don't recall other than that it was possibly for some small mines or something of that sort. It looks like the mines were all from a 60 cent haul area. I don't tie it in right now.

"Q. In this same memorandum on the second page, Mr.

Travis says, 'We have been able to operate the small mines successfully, due to the majority of our mines having an average life of approximately four years. As new mines were opened we reduced the price we paid the operators for the coal in order to meet the gradual declining coal prices over the past ten years. You will remember that Tennessee Consolidated has long-life mines and I doubt if the mines have operated one-third of the time the past five years.'

"Is that a fairly continuing drop in the prices?

"A. Yes, sir.

"Q. And didn't the Tennessee Consolidated bids from their small truck mines, or hand-loading mines, did they compete against those companies and bid for the spot market?

"A. Yes, sir.

"Q. And during the years '57 and '58 wasn't
2419 there a reduction in the amount of coal that they consumed at Widow's Creek?

"A. I don't recall that there was a reduction in amount, there was a reduction in the price that they had been paying for it.

"Q. Were they competing with one another for that coal?

"A. I believe so, yes.

* * * * * * * * * *

2421 "Q. Let me go over again the various types of mines you had. First, you had the mine you operated yourself, Reel's Cove. Then you had what is called the small mechanized mine contract, that's the mechanized mines that you've described earlier as having five in one area and six or seven in another area?

2422 "A. Seven or eight in another.

"Q. Then you had what has been described as bona fide leases to small hand-loading truck mines?

"A. That's where it was strictly on a royalty basis.

"Q. You only received a royalty from them?

"A. Only a royalty.

"Q. Then you had the balance of your mines covered by sub-contract agreements, some 40 or 50, where you endeavored to establish the operators were independent contractors?

"A. Yes.

"Q. That was not a lease agreement, was it?

"A. Yes, it was under a lease agreement, sub-lease agreement. All of them were under some sort of agreement.

"Q. What was the difference between bona fide leases to small hand-loading mines and the balance of them, 40 or 50, covered by sub-contract agreements?

"A. Well, the difference was—what is the date of that?

"Q. This is December 19, 1958, that I am reading.

"A. There were certain groups of them that we released altogether and told them we would not even handle their coal and said, 'You handle your own coal,' and they were given various reasons. One of them had a contract with Penn-Dixie Cement Company. The only thing we ever sought from them was weight tickets and royalty. Of
2423 course, we made our normal man survey along with the TCI, which we had to do. There were others that we had a lease that we would sell the coal using our facilities and things of that sort—should they use our loading ramp they would be charged so much, and should they use our scales they would be charged so much—and required them to weigh it over our scales, or other scales suitable to us, things of that sort. I am sure you will find copies of those leases some place in the file.

"Q. And those companies, bona fi*ed* leases, are the ones that sold to the partnerships and to Tri-States?

"A. I beg your pardon?

"Q. And those companies that you described as the bona fide leases?

"A. Not necessarily. They primarily sold to other sources other than TVA.

"Q. Did they also sell to TVA?

"A. They could, they had a right to.

"Q. Well, I will read you this memorandum that I have, which is dated December 19, 1958, recap of various memorandums. W. J. Travis to W. A. Moody, in re: Small mine contracts. Paragraph 2 says:

" 'Bona fide leases to small hand-loading truck mines where we obtain only a royalty on the coal mined by them, this coal is sold to independent third parties. These
2424 leases cover 38 mines and are firm leases until January, 1960, and then from year to year thereafter cancelable by either party. Presently these mines are selling to TVA through Tri-States Coal Sales Company, Chattanooga, who is collecting our royalty for us, regardless whether these 38 mines are signatory to the UMWA contract until January, 1960, we are creating no liability by signing the union contract. The major percentage of these mines will be mined out during this period.'

"A. That's about right.

"Q. They were selling to TVA through Tri-States, through the arrangement we have talked about earlier?

"A. They could have sold coal to any of them but they had to make their own arrangements.

"Q. On all the other mines, the balance of the small hand-loading mines, you had a 60-day cancellation clause?

"A. Yes, sir.

"Q. And most of those was where you anticipated that they would be worked out entirely by 1960?

"A. Possibly so.

"Q. Did you ever consult with Lou Wolfson?

"A. Yes, sir.

"Q. What did you consult with him about?

"A. Various things.

"Q. Such as?

2425 "A. Such as the price of soil pipe in the State of Florida.

"Q. I mean about your—

"A. Chemical operations.

"Q. Did you consult with him about the mining operations?

"A. Very little. We talked in general about it. Frankly, Mr. Wolfson didn't know enough about the coal mining operation other than to just give him a picture of it and he would end up by saying, 'This is good,' or, 'This is bad,' because a lot of the ins and outs of the working of the coal mining he was not familiar with.

"Q. Wasn't he a paid consultant of your company?

"A. Yes, sir.

"Q. And you discussed with him the financing a great deal?

"A. Oh, yes.

"Q. How to finance?

"A. Not necessarily coal mines, sir. I had lots of responsibilities other than the coal mines.

"Q. By the way, do you know what the Fink contracts were?

"A. Fink contracts? They were contracts that were—some of our coal mining operations that were reviewed and revived by an attorney by the name of Melvin Fink.

2426 "Q. Who is he?

"A. He was in the office of Lipstein, something and Fink, in Jacksonville, Florida, which was a firm of attorneys that were on retainer by Merritt, Chapman and Scott.

"Q. And what were the Fink contracts? What were they supposed to do?

"A. The Fink contracts were final drafts of the mechanized contracts, I believe. I am not sure. He reviewed all of our manual contracts. We had other things to worry about than the Welfare Fund, our loss liability and our workmen's compensation, our liability under the truckers

hauling coal if they should kill some people on the highway, and things of this sort, so we had contracts reviewed by what we thought was, or what we were told was the best legal advice we could get. Mr. Fink turned out to be some of that good legal advice.

"Q. How about David Reich, what did he do? Do you know him?

"A. Yes, I know him, but he had nothing to do, as I recall, with the coal mining operations, because he was not connected with Tennessee Products as long as I was there. He was with Merritt, Chapman and Scott.

"Q. Do you know what he did with Merritt, Chapman and Scott?

"A. At one time he was administrative assistant 2427 to Bob Harvey, who was the president. He is now executive vice president of Tennessee Products, and is the head executive officer here in Nashville.

"Q. Did you ever consult with him about the operations?

"A. No, sir, not that I ever recall. Only one time I talked to David Reich about anything in connection with the coal mining operation, and that was in arranging to get some strip mining equipment for Lightman Coal Company.

"Q. Did you ever complain to Mr. Wolfson about the competition you had from Marion shovels?

"A. With Marion shovels?

"Q. Strip shovels.

"A. The competition we had from Marion shovels?

"Q. Did you have any competition from any strip mines any place?

"A. Oh, yes, we had—

"Q. Did you complain to him?

"A. Not that I recall. The biggest complaints of Marion power shovels to Merritt, Chapman and Scott, was just for Marion being a part of Merritt, Chapman and Scott, in that Merritt, Chapman and Scott was a big contractor and other contractors wouldn't buy from them.

* * * * * * * * * *

2428 Mr. Owens: I think we have agreed, your Honor, there is an error in the transcript to the effect that he was a director of Republic Steel, we think it is another steel company that was a division of Merritt, Chapman and Scott, rather than Republic Steel.

Mr. Rowntree: That is correct.

(The reading of the deposition was continued.)

"Q. You made a recommendation to start the new mine, that's the Morganville Mine?

"A. Morganville, yes, sir.

"Q. Do you remember when that was first proposed?

"A. Well, it had been projected for years that this would be the next block of coal that we would move a major mining operation into. We had talked with TCI for years how we would mine it, where we would open it up and everything. We had some general idea even when we built Reel's Cove back in '42 and '43, because both properties were facing each other across Reel's Cove and we contemplated that when we opened that big block of coal that we would use the same rail facilities that were coming into the Reel's Cove property, and as it was eventually carried out, that's the way it was engineered.

2429 "Q. Around 1955 you actually recommended to Merritt, Chapman and Scott that they proceed with that?

"A. Yes, sir.

"Q. And from time to time thereafter you proposed it, didn't you?

"A. Yes.

"Q. Did they follow your advice?

"A. No, sir.

"Q. Did you complain about the equipment that you had, that the equipment was wearing out?

"A. Yes, sir.

"Q. And recommended that they make expenditures, purchase new equipment?

"A. Among a lot of my recommendations, yes, sir.

"Q. Did they ever follow your recommendations?

"A. Yes, sir, they did.

"Q. As a matter of fact, didn't Mr. Wolfson suggest instead of buying new equipment that they tie it together with baling wire that you had down there?

"A. We were already doing that.

"Q. Rather than spend any more money he told you to keep doing that, didn't he?

"A. Well, that is a long story, but that will suffice right now.

"Q. Well, isn't it true that your equipment was 2430 old?

"A. Our equipment was old, it was not the best, we had convinced ourselves of that.

"Q. And that you would recommend that they would purchase new, modern equipment?

"A. Or good secondhand equipment.

"Q. And that that request was turned down by Mr. Wolfson?

"A. Yes, sir.

"Q. And in 1957 your father recommended that they purchase new or better used equipment and that Mr. Wolfson told him at that time that, 'We are going to reduce our capital expenditures for Tennessee during 1958, even if we have to start using baling wire on some of our equipment.'?

"A. But those capital expenditures were only a minor part of the overall capital expenditures that were earmarked 'coal mines.'

"Q. And that was after Mr. Wolfson took this position that you started using the baling wire?

"A. No, we had been using 'baling wire' ever since I was with the company.

"Q. Well, during this period in time, weren't there divisions of Tennessee Products that were losing money?

"A. Losing money?

"Q. Yes.

"A. One other segment that I know of was losing
2431 money in, I would say 1959, 1958 possibly, the No. 2 plant at Rockwood lost money on low carbon coal.

"Q. Were their earnings way below expectations in the Rockwood plant?

"A. As far as the No. 2 plant was concerned; well, both plants were far below expectations.

"Q. And at the same was Merritt, Chapman and Scott experiencing difficulties in other divisions that they had?

"A. Yes, sir, they had to reverse some profits they had taken in previous years to kind of offset that.

"Q. And this was one of the reasons why they didn't make these capital expenditures you were recommending?

"A. That could possibly have been.

* * * * * * * * * *

2433 REDIRECT EXAMINATION

(Thereupon, Mr. Rowntree read the questions and Mr. Rayson the answers.)

* * * * * * * * * *

2436 "Q. Mr. McFarlin, did you make surveys of the truck mines with respect to tonnage removed from the mines?

"A. Yes, sir, we did.

"Q. How was that done?

"A. It was done by just a survey by measuring the height of the coal, the area that was mined out, and calculating the tonnage.

"Q. Was a comparison made between that and
2437 the tonnage?

"A. Yes, sir, there was.

"Q. Do you recall any appreciable variance in the reported tonnage shown up by the surveys?

"A. All of it was within the limits of engineering capabilities.

"Q. Within reasonable tolerance, you mean?

"A. Yes, sir.

"Q. Who made those surveys?

"A. TCI, Tennessee Coal and Iron Railroad Company.

"Q. Was that the lessor?

"A. Yes, sir.

* * * * * * * * * *

2445 ROLLAND O. BAUM
DIRECT EXAMINATION

(Mr. Rowntree read the questions and Mr. Chambliss the answers.)

"Q. What is your name, sir?

"A. Rolland O. Baum.

"Q. Where do you live?

"A. 50 Butler Road, Scarsdale, New York.

"Q. How old are you, Mr. Baum?

"A. Fifty.

"Q. What was your education?

"A. Engineering and business administration.

"Q. Where did you graduate?

"A. I didn't.

"Q. Where did you go to school for engineering?

"A. I went to Case Institute of Technology for Chemical Engineering and Western Reserve University and
2446 NYU for BA.

"Q. What was your business experience after you got out of school?

"A. Well, principally business.

"Q. Was it a general mixture of business enterprises?

"A. It was a general mixture of business enterprises ranging through ship building, construction, paint, chemicals, heavy metals.

"Q. Any coal mining?

"A. Just once.

"Q. When was that?

"A. At Tennessee Products.

"Q. Were you employed by Merritt, Chapman and Scott?

"A. Yes.

"Q. What period of time did that cover?

"A. 1949 to 1958.

"Q. Was it 1958 that you went with Tennessee Products?

"A. That's correct.

"Q. Was that a subsidiary under Merritt, Chapman and Scott?

"A. Yes, it was."

The Court: What date did he say he went there?

Mr. Rowntree: He went in 1958 to Tennessee Products.

"Q. What was your job while you were working for Merritt, Chapman and Scott?

2447 "A. When I left Merritt, Chapman I was one of the three executive vice presidents in charge of staff functions and subsidiary problems.

"Q. When you went to Tennessee Products in 1958, what was your position down there?

"A. Executive vice president.

"Q. Did you become president of Tennessee Products?

"A. Yes, I did.

"Q. When was that?

"A. In August of 1958.

"Q. As president did you have any responsibility for the coal mining operation of Tennessee Products?

"A. I had overall responsibility for everything they had.

"Q. Did you visit the mines and see the conditions at the mines?

"A. Yes, I did. At them and in them.

* * * * * * * * * *

2449 "Q. Did you have any responsibilities with respect to the signing of the 1958 amendment to the National Bituminous Coal Wage Agreement?

"A. I was involved in it, yes.

"Q. Were you president at that time?

"A. Yes.

"Q. Did you attend a meeting in Washington?

"A. Yes, I did.

"Q. Do you recall what the problems were that brought on that meeting?

* * * * * * * * * * *

2450 "A. Well, we had been experimenting intermittent shutdowns at many of the small mines in the area, and thought that this would be a good time to maybe bargain for some assistance from the International in straightening this out.

"So, a group of us made an appointment with the United Mine Workers in Washington and met with them, explained our problems and—

"Q. Go ahead.

"A. If you would like me to say who was there.

"Q. Yes, go ahead, explain who was there.

"A. As I recall it, on our side, Carl McFarlin, Jr., Woody Travis, Herschel Daffron and myself were present.

"Q. Mr. A. A. Kelly?

"A. Yes, I think he was. Mr. Lewis, Mr. Boyle and I am trying to think who else from the—I don't recall whether Mr. Kennedy was there or not. I believe he was.

* * * * * * * * * * *

2451 "Q. What was the upshot of the meeting?

"A. Well, the final conclusion was that Mr. Lewis said that he would do everything he could to control picketing action of the local miners, and on that promise we signed the contract, the amendment.

* * * * * * * * * * *

"Q. To what extent did the United Mine Workers represent the employees in the coal mines in the Tennessee Products property?

"A. They represented all of the employees in our major

mine, the Reel's Cove Mine, and it was my under-
2452 standing that all of the independent mines in the area also had contracts with the United Mine Workers, on our property and otherwise.

* * * * * * * * * *

2466 "Q. After your meeting in Washington with the officials of the United Mine Workers, will you state whether or not the picketing stopped down in the coal fields of Tennessee Products?

"A. As I recall it, it eased up. I don't know that it ever really stopped. We had some periods of calm over the years but not many.

* * * * * * * * * *

2471 Mr. Rowntree: The first telegram, which refers to a date in the body of the telegram of June 5, 1961, is from R. E. Merryman to Thomas Kennedy.

"I am sure you are aware of the illegal work stoppage existing Reel's Cove Mine since June 5, 1961. Your Representatives Ridings, Edwards and Madewell worked diligently last Tuesday and Wednesday and also on the past Saturday and Sunday. We feel no progress was made primarily due to the men ignoring advice and instructions of your representatives. We anticipate that it will require direct intervention by your office to bring about a prompt solution. Please advise."

The second telegram dated July 24, 1961, from R. E. Merryman to W. A. Boyle, Vice President, UMW.

"Your personal efforts in terminating the work stoppage at our Reel's Cove Mine are greatly appreciated. In the belief that the interest of the company and the men
2472 can best be served through continued cooperation and understanding between union and company officials we are proceeding with the development of further plans for expansion and modernization of our operations. Expect to be in position to discuss these with you in ap-

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proximately 30 to 60 days and will contact you for an appointment at that time."

* * * * * * * * * *

2495 Mr. Rowntree: We would like to read Exhibit 247 introduced just before that last letter from Mr. Turnblazer to Mr. Callis of Tennessee Consolidated and Mr. Baum of Tennessee Products.

"Gentlemen:

"I find it necessary to reply to the letters addressed to me or to members of our union by your agents, Sewanee Coal Operators' Association and Houston Beaumont, that have been given general circulation in Southern Tennessee. It is regrettable that you have by your silence condoned the false and misleading information contained in this propaganda. It is degrading to you and your companies. We all know that your two companies either own or control virtually all of the coal mines in Southern Tennessee. Therefore, you cannot escape the responsibility for this deceitful campaign by operating under the cover of the Sewanee Coal Operators' Association and your agents.

2496 "It is false when you allege that the United Mine Workers of America agreed that your companies, or any under your control, could pay your employees less than the wages called for under the National Agreement or less than the 40 cents per ton called for under such agreement to be paid to the United Mine Workers of America Welfare and Retirement Fund. It is true that for a number of years you were able to cover up failures to pay the amounts agreed to under that agreement, by using and taking advantage of so-called small operators, whom the Supreme Court of Tennessee has ruled to be mere employees. Your charges against the union were made only after being 'caught' violating this agreement. We have since that time attempted to find a method to insure that you cannot go this 'route' again, and to be sure the coal miners

in Southern Tennessee get the wages and benefits to which they are justly entitled.

"You talk about 'sweetheart' contracts. We have none and you will not have such a contract. Actually, the proposition you have made to the United Mine Workers of America in our bargaining sessions is a demand that we enter into a 'sweetheart' contract; that is, one where you can pay less wages and less into the Welfare Fund than we require of your competitors. This is a vicious proposition, and so that there can be no misunderstanding, United Mine Workers of America will not recommend to its
2497 members acceptance of offers by which you can enrich yourselves by requiring your employees to labor at your proposed rates. Nor will we recommend a contract whereby you can destroy the medical program protecting them, their wives and their children. Nor will we assist you in destroying their death benefits or the security of their pension rights protecting them in the twilight years of their lives. Nor will we recommend a contract whereby you could destroy the mine safety code in the National Bituminous Coal Wage Agreement. You have not presented any facts which would justify such a proposition. The new Grundy Mine, for example, which our members worked after expiration of the contract and during negotiations, demonstrates that mines in this area are capable of very high productivity. Indeed we understand that it produced on the order of 35 tons per day per man as opposed to a national average of approximately 12 tons per day per man. You must be aware that from an economic standpoint any economic concessions granted to your companies would be immediately demanded, and rightfully so, by your competitors.

"It is also false when you state the United Mine Workers of America refuses to engage in this 'sweetheart' contract agreement with you because of its ownership of stock in the West Kentucky Coal Company. It has been re-

ported to me, and I am sure you are aware, that not a ton of West Kentucky Coal Company's coal has been
2498 shipped to TVA's Widows Creek Steam Plant. Your knowledge of this, of course, is apparent, since you carefully intermingled the words 'West Kentucky Coal Company' with 'West Kentucky Mines', and thus attempt to deceive the readers of your propaganda. The United Mine Workers of America does not control or operate the West Kentucky Coal Company or participate in any way its management. I can say, however, that that company does operate under and in accordance with the National Bituminous Coal Wage Agreement. We believe that the coal miners of Southern Tennessee are entitled to just as much for their labor as are the coal miners of Western Kentucky or any other part of the country. To say that we want a competitive advantage for any company at your expense is an absolute falsehood.

"You state that you can guarantee employment five days a week to 550 miners, with wages in excess of $100 per week. I suggest that we meet immediately to explore the possibility of this offer of a guaranteed annual wage, if this is an offer to your employees. You have not made any such proposal to any representative of the United Mine Workers of America and I doubt that you will. No such informal promise will deceive members of our organization. They know you can afford to pay the wage scale and Welfare Fund royalties.

"I am of the opinion that by the proper adminis-
2499 tration and operation of the mines of your companies, that you can pay the wages and operate under the working conditions provided for in the National Bituminous Coal Wage Agreement. If the efforts of you and your companies were directed toward this end instead of attempting to use the law to 'blackjack' your employees, this can be easily accomplished. I can state with confidence that I do not believe you will be successful in such 'black-

jack' tactics. Your employees and the coal miners of this area cannot be blundgeoned into submission by this or any other method.

"I think you should wake up to the fact that these men will not work under your proposed terms. They stand firm in spite of economic hardships and in the face of severe injunctions which we believe will be dissolved when the courts hear all of the proof and the employees rights guaranteed them by law and the constitution will prevail.

"Because of its extensive nature, I have not attempted to reply in this letter to all of the false and misleading statements and innuendoes made or inspired by your representatives during the last few weeks. However, I suggest that we meet at the earliest possible date in a sincere effort to iron out the problems that confront us."

(The reading of the deposition was continued.)

"Q. Mr. Baum, do you recall whether or not there
2500 was truce in the picketing and work stoppages during the period of the negotiations?

"A. Yes, there was.

"Q. What happened at the conclusion of the negotiations? Were the negotiations between Sewanee Coal Operators Association and United Mine Workers successful in negotiating a collective bargaining agreement in the Southeastern Tennessee field?

"A. No.

"Mr. Combs: You mean up to what time?

"Q. Up to the time that you left the company.

"A. That's right.

"Q. They had not been successful?

"A. No, sir.

"Q. Were the negotiations still going on at the time you left Tennessee Products altogether in July, 1963?

"A. I don't believe they were.

"Q. What had happened in the meantime with respect to the continuance of the production of coal?

"A. There had not been any.

"Q. For how many months would you say?

"A. At least six that I know of.

"Mr. Combs: You mean six months immediately prior to your leaving there that they had been down?

"A. That's right.

2501 "Q. In July, 1963?

"A. Right.

"Q. Why was this? Why was there no production of coal?

"A. Well, there was continuous picketing at all of the mines.

* * * * * * * * * *

2502 "Q. What was the general policy with respect to the purchase of hand-loaded coal? Was Tennessee Products continuing to buy all of the coal from them?

"A. Oh, no.

"Q. With respect to the mechanized mines, truck mines, was Tennessee Products buying that coal?

"A. Yes, we were.

"Q. Did these hand-loading truck mines have any market besides Tennessee Products to put their coal into?

"A. Oh, yes. They sold to cement companies and other commercial enterprises, and I believe they also sold on spot market to TVA.

"Mr. Combs: Did Tennessee Products have the right of refusal of that coal?

"A. At one time they did, but not during the latter years.

"Mr. Combs: You mean by 'latter', what period?

"A. 1960 through 1962.

* * * * * * * * * *

"Q. Did Tennessee Products encourage the hand-loading truck mine operators to mechanize?

"A. We certainly did. In fact, under the T-3
2503 contract that we had with TVA it was almost mandatory that we encourage the installation of the

small mechanized mines and we went so far as to finance most of them or guarantee their obligations for equipment.

* * * * * * * * * *

2511 "Q. Mr. Baum, turning over to the Reel's Cove Mine itself, I will ask you were there restraints in loan agreements entered into by Tennessee Products and by Merritt, Chapman and Scott which restricted the amounts and forms of loans that could be made by Tennessee Products for large scale capital expenditures?

"A. Well, there were definite restrictions.

"Q. Borrowings by Tennessee Products?

"A. In both Merritt's and Tennessee's long term loan agreements restricting our further borrowings or capital expenditures, yes.

"Q. Is this a form of the loan agreement between Tennessee Products and Irving Trust Company and other banks dated December 30, 1958? Is that one of those agreements that you referred to?

"A. Yes, sir."

Mr. Rowntree: At this point we refer here in these questions to certain loan agreements, we did not put them

2512 into evidence because we only had the original. I just wonder if counsel is objecting to this because we did not file them at that time?

Mr. Combs: We don't object to them but are you going to have something in the record with reference to them?

Mr. Rowntree: Well, they are mighty bulky. I think that the statement of the witness in the first question is sufficient for our purposes and we will skip through this.

Mr. Combs: Well, now, if the Court will indulge me a minute, I might as well tell counsel we think this is a rather important part of the case. What counsel is doing through this witness is showing that Merritt, Chapman and Scott had very definite restrictions on the power of their subsidiary, Tennessee Products and Chemical, in their finances and we say that that has to be considered with reference

to their ability to mine this coal. We think it is a highly important fact.

Mr. Rowntree: You mean in the truck mine operation?

Mr. Combs: Certainly, mechanical mines, this thing is interlocked here and the new mine that you brought in here that they were going to make there, the Morganville mine and this whole series of things back up that proposition, that this was on Tennessee Products and Chemical, on what finances they would be allocated from their holding
2513 company up in New York, on how much they wanted to put in a foundry or a coal mine.

Now, I don't want counsel to run in here holding a stack of documents at all but we ought to have something specific that he could read from or some kind of analysis that would show the nature of these restrictions and all.

Now, if counsel wants to supply that later we will try to work out a stipulation on it, it is all right with me, but I certainly don't want it in the record as it is here.

Mr. Rowntree: Well, we will just skip over this testimony and go to Page 52, Line 17.

Mr. Combs: Let's read the testimony. We want the testimony in now, we are talking about the exhibits.

Mr. Rowntree: All right, sir.

(The reading of the deposition was continued.)

"Q. Is this a form of the loan agreement between Tennessee Products and Irving Trust Company and other banks dated December 30, 1958? Is that one of those agreements that you refer to?

"A. Yes, sir.

"Q. Do Paragraphs 3.8 and 3.10 put restraints on borrowings?

"A. Yes, sir, they do.

"Q. Was that agreement still in effect in 1962?

2514 "A. Either this one or a subsequent one. I believe it was a subsequent one that was in effect at that time.

"Q. Would that be the revolving credit agreement?

"A. That's right.

"Q. I show you a revolving credit agreement dated October 3, 1961, between Tennessee Products and Chemical Corporation and Third National Bank, Nashville, and other banks, and ask you if that is that agreement?

"A. Yes, this is the one, this is the one that directly followed the one previously mentioned.

"Q. Was that one in effect in 1962?

"A. Yes.

"Q. Did you ever obtain any credit under that agreement?

"A. Not while I was with Tennessee Products.

"Q. Mr. Baum, was the obligation under the loan agreement under December 30, 1958, paid off while you were with the company?

"A. Yes, sir, it was.

"Q. When was that?

"A. I believe that we made the final payment in September of 1961.

"Q. How much in the amount of loans for capital expenditures did you pay off while you were there for Tennessee Products?

2515 "A. Well, all of this one, it was $7,000,000.

"Q. What was the main reason for the incurring of that obligation?

"A. The construction of their own electric plant at Rockwood.

"Q. Do you know approximately when that construction took place?

"A. 1956 and '57.

"Q. Mr. Baum, was this $7,000,000 paid out of the operating income of the corporation?

"A. Yes.

"Q. Was this a heavy drain on the corporation?

"A. It certainly was.

"Q. Was this true throughout the period that you were there up until September, 1961?

"A. Yes, it was.

"Q. Do you have any other obligations besides that represented in the loan agreement in front of you?

"A. Yes, we had an obligation for about $8,000,000 to Merritt, Chapman and Scott, the parent corporation.

"Q. Had that been repaid by the time you left?

"A. No, sir, it had not.

"Q. It was still hanging over Tennessee Products at that time?

"A. Right.

2516 "Q. Was the matter of the cost of production per ton at the Reel's Cove Mine an important problem in management of the company from the time you went there?

"A. Just as important as the cost of any other product that we produced.

"Q. Was it a problem?

"A. It was a problem.

"Q. I show you memoranda commencing with one dated September 29, 1959, from Mr. R. E. Harvey of Merritt, Chapman and Scott, addressed to you, and also including a memorandum of Mr. J. E. Icenhour of Merritt, Chapman and Scott addressed to you dated September 29, 1959, and also a memorandum of October 15, 1959, from Mr. Icenhour to you, and ask if you received those memoranda?

"A. Yes, I received these memoranda."

Mr. Rowntree: We offer that as the next exhibit.

* * * * * * * * * *

2517 The Court: Gentlemen, I don't believe there is any matter here that the Court can act upon. If, by agreement, you gentlemen can work something out, well and good. Suppose we try it and we will see what we can do.

The last three memoranda will be introduced as
2518 Exhibit No. 253.

Mr. Combs: Would your Honor pardon me and indulge me just one minute? We have no objection to it if counsel wants to read it, if he is going to read the deposition.

(The documents referred to above were marked P253 and received in evidence.)

Mr. Rowntree: I might summarize this, that this is a memorandum from Merritt, Chapman and Scott to Mr. Baum at Tennessee Products complaining about the high cost of productivity in the Reel's Cove Mine.

To the top of Page 56.

Mr. Combs: We are wondering what relevance there is that counsel sees in connection with the Merritt, Chapman and Scott complaining to Tennessee Products and Chemical about the cost down here. They fired four or five people already in this evidence here that he has already exhibited. I don't know what relevance it has.

Mr. Rowntree: Well, there has been considerable questioning throughout the depositions on discovery by the United Mine Workers with respect to the failure of Merritt, Chapman and Scott to authorize expenditures aggregating between two and three million dollars for a new mine on the Tennessee Products property at a time when a lot of things were going on in the coal field and if we can agree that that failure has nothing to do with this lawsuit
2519 then we can waive that exhibit and several others.

Mr. Combs: Of course, we are not going to agree to that, that failure had nothing to do with the lawsuit. Counsel is starting out this line of evidence and he is putting it into the record and we certainly think it has a lot to do with the lawsuit, with his claim that the union was a cause of the failure and we certainly will not agree and we want him to go ahead with this deposition or we will.

The Court: All right.

Mr. Rowntree: You ask me to leave this in or are you objecting to this exhibit?

Mr. Combs: No, I am not objecting to the exhibit except

the relevance of the cost in this particular situation here. Now, you are on a particular exhibit now.

Mr. Rowntree: Yes.

Mr. Combs: Yes, I am objecting to any relevance. It's a very short exhibit. I think in view of all this I will just withdraw my objection, it's not worth quarreling about.

Mr. Rowntree: All right. The exhibit does show the extremely high cost of productivity in the Reel's Cove Mine and we say that it is highly pertinent to the question of the failure of the company in this period of time through all of these circumstances to spend two to three or
2520 more million dollars on their coal mining operations on the property.

Mr. Combs: We withdraw our objections to the relevancy of it but certainly I don't agree with counsel's statement.

(The reading of the deposition was continued.)

"Q. Mr. Baum, do you recall that in February, 1960, you were placed under restraints about getting approvals of capital expenditures by the parent company?

"A. Yes, sir.

"Q. Merritt, Chapman and Scott?

"A. Yes, sir.

"Q. Did Merritt, Chapman and Scott in February, 1960, approve a major capital expenditure for the Chattanooga chemical plant?

"A. They did.

"Q. I show you a memorandum of February 1, 1960, from Mr. Harvey. Who is he?

"A. President of Merritt, Chapman.

"Q. To you, and also memorandum from you to various individuals in Tennessee Products and ask you if you received the first memorandum and distributed the second memorandum?

"A. Yes, to both.

"Q. Looking at that memorandum from Merritt, Chapman and Scott, do you recall that proposals with

2521 respect to the installation of a new major mine on the coal properties of Tennessee Products hinged upon and were contingent upon working out outside financing?

"A. Yes, sir.

"Q. What was the attitude of Merritt, Chapman and Scott at that time with respect to the financing of a major mine on Tennessee Products' property as to where the funds would have to come from?

"A. The funds would have to come from outside sources. It could be financed by either Tennessee or Merritt, Chapman.

"Q. Did you have prospects for obtaining such outside financing in that period of time?

"A. We worked on prospects for a number of years.

"Q. What was one of these prospects?

"A. Republic Steel.

"Q. Had you worked on that account for quite a bit of time?

"A. Yes, sir, a number of years.

"Q. Was that still going on when you left the company?

"A. No, it was dead then.

"Q. Do you recall what killed it?

"A. I think Republic made some other arrangements for coal supply."

Mr. Combs: We objected to that and we renew our objection to it. "I think Republic made some other
2522 arrangements for coal supply." We object to the witness thinking about what Republic may have done.

* * * * * * * * * *

2523 Mr. Rowntree: This is a memorandum dated February 15, 1960, from Baum to the various people inside of Tennessee Products, various officials, and a photostat of a memorandum dated February 11, 1960, from Harvey of Merritt, Chapman to Baum.

The Court: All right.

Mr. Rowntree: It has to do with capital expenditures

authorized for the year 1960 and particularly authorizes an expenditure of $1,230,590 for the chemical plant at Chattanooga in addition to $800,000 authorization for general capital expenditures.

The Court: Exhibit 254.

(The documents referred to above were marked P254 and received in evidence.)

Mr. Combs: If counsel will pardon me, Page 2 of the memorandum has this paragraph that I would like to read.

* * * * * * * * * *

2524 Mr. Combs: "In addition, the above approval is granted with the understanding, as discussed with you today, that the approximately $3,000,000 capital requirement that may be necessary by opening of new coal mine in 1960 will have to be supplied by outside financing and will have to be accomplished in a manner not restricted by Tennessee's or Merritt's loan agreements. It is my understanding at this point that Republic may be interested in providing this additional capital in advance against a long-term coal contract, which will be repaid on a cents-per-ton basis over a period of future years, which according to Mr. Staub can undoubtedly be worked out without violating our loan agreement restrictions. In any event, it is suggested that before commitments are made on outside financing for the capital required for the coal mines, you work closely with Mr. Staub in order to avoid any possible conflict on our loan agreement restrictions on incurring additional indebtedness."

Mr. Rowntree: Line 17, Page 63.

(The reading of the deposition was continued.)

"Q. Mr. Baum, do you recall the making of a survey by Robinson and Robinson, an engineering firm with respect to the installation of a new mine?

2525 "A. Yes, sir, I authorized it.

"Q. Is this a copy of the report they gave you?

"A. Yes.

"Q. When was that report?

"A. March, 1960."

Mr. Rowntree: That report was exhibited to Mr. McFarlin, Jr. previously.

"Q. Was there an incident in the labor field shortly after that that had an effect on this situation? I show you a memorandum dated May 12, 1960, from W. J. Travis to Reel's Cove employees.

"A. With a copy to me, right. Yes, there was in regard to Reel's Cove.

"Q. Did the subject of that memorandum have an effect on management's decision in respect to going ahead with the Reel's Cove new mechanized mine?

"A. It very effectively suspended it."

Mr. Rowntree: We offer that as the next exhibit.

(The memorandum referred to above was marked P255 and received in evidence.)

* * * * * * * * * *

Mr. Rowntree: This is from W. J. Travis to all
2526 Reel's Cove employees.

"Subject: Whitwell Operations."

It is dated May 12, 1960.

"The disturbing and disappointing events of the last two months make me feel that I should write to you to bring you up to date on the coal mining operations under my jurisdiction.

"Nine of the last ten months the Reel's Cove Mine has operated, the mine has been unprofitable; however, profits from the small mines have made the overall operations show a profit or at least to break even during this time. A year ago at this time we had substantial tonnage coming from the small mines; however, at the present time the tonnage is running approximately 1500 tons per day, which is less than 25 per cent of what it was. Because of Reel's Cove's poor showing and the substantially reduced profits from

the truck mines that formerly carried Reel's Cove, the overall earnings from the mining operations are negligible.

"Most of you are familiar with the Daus and Whitwell hand-loading mines which are rapidly working out. These mines will be worked out on TVA spot contracts sold through sales agencies and the company will only receive a royalty which contains no profit.

"Under the present circumstances, because of insufficient tonnage, we do not foresee Whitwell opera-
2527 tions operating at a profit.

"New Morganville Mine:

"Even though the coal markets continue to get worse, Mr. McFarlin, Mr. Daffron and myself were successful in convincing Mr. Baum, the new president of our company, that we could make money with a new and modern coal mine. We have prepared many reports and records and have had consultants visit the property over the last 18 months in our efforts to sell the management on the opening of a new mine. One of the most important means of convincing Mr. Baum that a new mine would be profitable was Mr. Daffron's and my statement to him with regard to the high type of mining personnel on hand to work the new mine. We were able to sell Mr. Baum on the fact we would get full cooperation from our men in every respect. The interference and mistakes made by four or five Reel's Cove men have proven Mr. Daffron and myself to be wrong in our statement of cooperation and attitude of our mining personnel.

"I have tried to convince your mining committee with the fact that the days of pressure by strike and other means in coal companies are gone due to the fact that profits from coal are so small that a company's capital can be invested much better in other fields of business.

"The only commercial coal mines presently operating under a UMWA contract are the ones where the men
2528 and the company are pulling together to keep the

cost of coal below the selling price. The coal companies that did not get the proper cooperation from the men either went out of business, went broke, went non-union or formed some sort of make-shift union. I never want to see any of these things happen to the Whitwell mines. They will not happen under my management.

"I feel that if the interference by the Reel's Cove men with the Griffith's Creek and Daus mines matters had not happened, the preliminary work on the new Morganville Mine would have started this month.

"I am sure the majority of you read Mr. Baum's wire to me and his feeling in this matter. Interference and actions like that which happened this past Monday when you sent your committee to TVA to interfere with company business which did not concern Reel's Cove, and the attitude of a few of your men, have torn down all the work and progress we have made over the past 18 months.

"I am disappointed that we are not now working on opening a new mine. Reel's Cove's life is very short, but I have been notified by top management that money will be appropriated for the opening of the new mine unless there is a change in the attitude of our mining personnel. I have felt and explained to your mine committee that

2529 nothing should happen that would interfere with the progress we are making with the opening of a new mechanical mine—a mine that would provide employment to the people of Whitwell for the next 30 years."

* * * * * * * * * *

2531 The Court: May I understand what this exhibit purports to be?

Mr. Rowntree: This is a appropriation request from Mr. Merryman to Mr. Baum with respect to the proposed new mine and it is dated April 24, 1961.

Mr. Combs: Does counsel desire to read it in evidence?

Mr. Rowntree: No.

Mr. Combs: Well, we would like to read the paragraph on Page 2.

2532

The Court: Exhibit No. 257.

(The memorandum referred to above was marked P257 and received in evidence.)

Mr. Combs: Subparagraph 3 on Page 2 of the exhibit offered says this:

"Competition on coal sales in our marketing area is terrific. However, had we started our present program in 1957 we would be selling coal at the desired rate and showing a satisfactory profit even with the depressed market. With the projected increased coal consumption in our market area, better sales effort, and the new mining facilities, we should expect better sales and profits in the years ahead."

(The reading of the deposition was continued.)

"Q. Did you sign that appropriation request?

"A. No, sir.

"Q. Do you know why?

"A. Because I couldn't get the financing for it.

"Q. Was it up to you to find the financing?

"A. Yes, sir.

"Q. Were you making efforts to work out some sort of arrangement with various sources at that time?

"A. Yes, sir, we were working principally with Republic Steel.

"Q. To clarify that, Mr. Baum, was that ever for-

2533 warded on to Merritt, Chapman and Scott?

"A. No, sir, it wasn't.

"Q. It would be required that they approve it at Merritt, Chapman and Scott before it would become effective as an authorization?

"A. That's right. There was no reason to forward it as long as I couldn't finance it.

"Q. Was this pursuant to instructions you had received?

"A. It was the normal course.

"Q. At that time, I will ask you if this paper here, schedule of plant changes and target dates, dated May 9, 1961, expressed some of the things that you were working on at that time in connection with this new mine development proposed?

"A. Yes, sir. This is part of a monthly president's report that was forwarded to the president of Merritt, Chapman.

"Q. Does that show that you were working at that time on a merger with Tennessee Consolidated Coal Company?

"A. Yes.

"Q. What was the purpose of this merger that you were working on?

"A. Well, the coal fields of the two companies directly abutted. They were about equal. And it certainly would have improved operations to operate the whole field
2534 as one operator rather then two.

"We also were encouraged by both TVA and Republic Steel to go forward and explore this. They felt that it would be beneficial.

"Q. Were you also working on the figures on what the Morganville Mine would cost still at this time?

"A. Yes.

"Q. I show you a report of Allen and Garcia to Tennessee Products dated June 8, 1961, and ask you how that came to be prepared and submitted to you?

"A. In our negotiations with Tennessee Consolidated they had had an Allen and Garcia report prepared on their properties, and for purposes of further discussion of the merger it was felt that Allen and Garcia should make a similar report on ours so that we would have a comparable base to start with. That's why it was made.

"Q. Is that a copy of the report that you received from them?

"A. Yes, sir, it is."

Mr. Rowntree: We offer that as the next exhibit.

The Court: Exhibit No. 258.

(The report referred to above was marked P258 and received in evidence.)

Mr. Combs: Is that as much as you are going to
2535 identify it?

Mr. Rowntree: Yes. I don't care to read anything except what I read into the record at this point.

Mr. Combs: All right.

(The reading of the deposition was continued.)

"Q. Mr. Baum, I notice in the Allen and Garcia report, Exhibit No. 258, it is stated:

" 'Construction of the Morganville Mine as proposed in Mr. Howard C. Human's report dated March 31, 1961, and detailed on drawing entitled "General Layout-Morganville Mine by J. C. Kelly, March, 1961", should receive immediate consideration. It represents a good workable solution but unfortunately the construction should have been started a year ago.'

* * * * * * * * * *

2536 "Q. Mr. Baum, you stated that some of the problem was you couldn't produce coal. Can you state more specifically why?

"A. Yes. You couldn't produce coal because the miners wouldn't cross picket lines.

"Q. Was this a problem in your mine as head of management?

2537 "A. This was a known problem due to the attitude shall I say, that the Reel's Cove panel maintained to the effect that if a new mine were opened, the Reel's Cove men would have to be the ones to go into the mine, and the equipment would have been entirely different.

"Q. What age were most of these men?

"A. They were, I would say, up in their middle years and beyond.

"Q. Did Tennessee Consolidated and Allen and Garcia's experience there have this same problem?

"A. They did. That's where they had most of the difficulties.

"Q. I show you a group of letters starting with a letter dated June 6, 1961, from Louis E. Wolfson to you and ask you if these letters show the meetings, initial meetings with respect to merger with Tennessee Consolidated Coal Company and the approval of the parent company with respect to proceeding in that direction?

"A. Yes, they do."

* * * * * * * * * *

2547 CROSS EXAMINATION

(Mr. Rayson read the questions and Mr. Owens the answers.)

"Q. Mr. Baum, when did you sever your relationship with Tennessee Products and Chemical Corporation?

"A. I resigned early in July, I believe that my 2548 formal severance was July the 16th, 1963.

"Q. When did you sever your relationship with Merritt, Chapman and Scott?

"Q. I believe it was December the 31st, 1957; it might be a little off. It was shortly thereafter, in January, that I came to Nashville, around the 12th or 13th, something like that.

"Q. Have you been working as a consultant since leaving Tennessee Products?

"A. Yes, I have.

"Q. Has any of your consultant work been with Merritt, Chapman and Scott, or any of its subsidiaries or affiliated corporations?

"A. Yes.

"Q. Would you state that work, please, sir?

"A. This right here; and, I have also been involved in two other legal actions that involve Tennessee Products and Merritt, Chapman, as well.

"Q. That you were paid some per diem arrangement or something?

"A. I was; that's right.

"Q. What were those legal actions?

"A. One had to do with the John Buske suit which was in Chattanooga last year, I believe. He was suing in regard to an improper contract, a breach of an
2549 employment contract. And, the other had to do with a collection suit with a construction firm on Long Island.

"Q. Well, have you had any employment with Tennessee Products or Merritt, Chapman, or any of its subsidiaries, other than in connection with litigations since leaving Tennessee Products in July of 1963?

"A. No.

"Q. When did you first start work with Merritt, Chapman?

"A. 1949.

"Q. You were a director of that company for some time, were you not?

"A. For about two years.

"Q. When was that?

"A. I believe it was around '53, somewheres between '53 and '55.

"Q. Were you a stockholder of Merritt, Chapman?

"A. Yes, sir.

"Q. Did you continue to be up until the time you left Tennessee Products in 1963?

"A. I still am; a very minor one.

"Q. Did you have any experience whatsoever in the bituminous coal industry prior to coming to Tennessee?

"A. No.

"Q. Have you had any experience in the bitumi-
2550 nous coal since then?

"A. No, sir.

"Q. Do you hold yourself out as being an expert or being knowledgeable in the affairs of bituminous coal?

"A. Knowledgeable only to the extent of my experience with Tennessee Products.

"Q. Do you know if Mr. Wolfson is an expert or is knowledgeable in the matters of bituminous coal?

"A. Not to my knowledge.

"Q. And I refer to Mr. Louis Wolfson, the Chairman of Merritt, Chapman and Scott.

"A. Yes.

"Q. Do you know Mr. Reich?

"A. Yes, sir.

"Q. Do you know if he has any expertise in this field?

"A. No, I don't.

"Q. Is your answer that he does not or—

"A. I don't know whether he does or not.

"Q. I believe he served as your executive vice president for a while, did he not, while you were president of Merritt, Chapman?

"A. Yes."

Mr. Rayson: I believe that should have been Tennessee Products, your Honor, rather than Merritt, Chapman, served as your executive vice president, for a while, 2551 did he not, while you were president of Tennessee Products?

"Q. Is there anyone in the executive hierachy of Merritt, Chapman and Scott that does have any expertise in bituminous coal?

"A. I don't know. There wasn't at the time I was associated with them.

"Mr. Rowntree: Except for Mr. McFarlin, Sr.?

"A. That's right. He was a director of Merritt, Chapman for a while.

"Q. Under what circumstances did you first come to Tennessee Products?

"A. Mr. McFarlin, who was then president of Tennessee

Products, had a serious heart attack in October of 1957 and couldn't adequately perform the functions of the president of the corporation, so I was sent down as executive vice president to fill a gap and assist him.

"Q. You were the man in charge from the moment you came down there, is that correct?

"A. No. I was executive vice president and general manager, that was my title when I came down, and Mr. McFarlin was the president.

"Q. Was he serving actually at that time?

"A. He was actually serving. He was coming into the office a day or two a week and, as his health would permit, he did.

2552 "Q. When did he finally completely leave the employment of the company, as far as active employment is concerned?

"A. He became chairman of the board in August—in August of 1958; and, his activity gradually declined from then until, I believe it was early in '59 when he retired.

"Q. Do you know if he was asked to retire?

"A. He was 65, it was mandatory retirement.

"Q. Mandatory retirement under company's rules?

"A. That's right. However, his health didn't improve and I don't believe he could have remained actively had he wanted to.

"Q. Did you have knowledge of his employment relationship with Tennessee Products? What sort of salary was he drawing?

"A. If I recall correctly, he was getting sixty or $65,000 a year, that's just a pure recollection."

Mr. Rowntree: Skip the next question.

"Q. Mr. Wolfson was on the Tennessee Products payroll also, wasn't he?

"A. As a financial consultant.

"Q. Do you recall what he was drawing out of that company?

"A. I think it's a matter of record, but my recollection is that it was thirty or $35,000 a year.

* * * * * * * * * *

2553 "Q. Did you remove Carl McFarlin, Jr. from the employment of the company?

"A. I asked him to retire, I mean resign. He and four other officers of the corporation, officers and department heads, at the same time. It was part of a substantial cutback that we made.

"Q. Was that the sole reason that you asked Mr. McFarlin, Jr. to resign?

"A. They were selected as those that could be spared the easiest under the circumstances.

"Q. You mean it was—

"A. (Interposing) We had a tough financial go all through my term there and we had, if I recall correctly, three major cutbacks in which several officers or department heads were relieved in each one of them.

"Q. And you are saying that the only reason Mr. McFarlin, Jr. was removed was because it was necessary for the company to reduce its executive work force?

"A. It was necessary for the company to reduce its executive work force and those that were asked to resign were the ones that could be spared the easiest, or the ones who were doing the least efficient job.

"Q. Which category did Mr. McFarlin fall in?

2554 "A. Both.

"Q. What about Mr. Travis, which category did he fall in?

"A. I guess both also.

"Q. I am referring, of course, to W. J. Travis, the manager of the mines at Whitwell at that time?

"A. Right.

"Q. Was there any other reason that Mr. Travis was severed from the company?

"A. Well, Mr. Travis had been somewhat controversial.

"Q. Why was he controversial?

"A. As to whether he was doing the job he was supposed to be doing.

"Q. What was the nature of the controversy?

"A. Opinions of various members of the corporation and the parent.

"Q. Were they claiming he did not manage the business of the mines?

"A. Well, the independent or the internal auditors raised some question as to his—as to whether his management was proper.

"Q. Why did they question his management?

"A. Well, in addition to being in charge of the coal mines, he was also in charge of the commissaries, and the auditors discovered some irregularities in the com-
2555 missaries' records, and the commissaries had also been a substantially loss operation, and, this was the real basis of the problem.

"Q. When were these findings made, over what period of time?

"A. 1958 and 1959. And the internal auditors, of course, did routine audits over irregular—on an irregular pattern.

"Q. Mr. Baum, was it your decision to remove Mr. McFarlin and Mr. Travis or were you directed to do so?

"A. It was a discussed decision. After all, you don't ask an officer to resign without discussing it with the board of directors.

"Q. Which board of directors now are you referring to?

"A. To Tennessee.

"Q. Tennessee Products?

"A. That's right.

"Q. You didn't get directions or assistance on that decision from Merritt, Chapman?

"A. There were strong opinions.

"Q. Have you stated the entire basis upon which you

made this decision concerning Mr. Travis and Mr. McFarlin?

"A. I didn't make the decision; the decision was made by the board, which I was a member of.

"Q. Who was the prime mover on the board con-
2556 cerning this decision?

"A. Well, there were a number of them.

"Q. Who were they?

"A. At various times, because the constituency of the board changed from time to time, Marshall, Staub, Bob Harvey, Gerbert.

"Q. Who was Gerbert?

"A. He was a director of the Tennessee and also a director of Merritt. I think those were the prime ones.

"Q. Let me ask you again, sir, when you first came to Tennessee Products?

"A. In January, 1958.

"Q. Had you had any connection with Tennessee Products before?

"A. I was a director.

"Q. You were a director?

"A. Yes.

"Q. How long had you been a director?

"A. Since '58.

"Q. It's my understanding that Tennessee Products was acquired by Merritt, Chapman in 1954, is that correct?

"A. I believe that is correct.

"Q. Do you recall that that acquisition was based on the exchange of stock on the market-for-market basis, with slight advantage to Tennessee Products?

2557 "A. It could be; I don't recall.

"Q. You don't recall?

"A. Not the basis of the exchange. I know it was the exchange of stock.

"Q. When do you first recall any recommendations being

made by Mr. McFarlin, Sr., or others, for the improvement of the coal mining properties at Whitwell?

"A. Well, they were subjects for discussions at board meetings as far back as I can recall, and that would be '55-'56.

"Q. Was it known as far back as 1955 and 1956 that your Reel's Cove equipment was inefficient and was also wearing out?

"A. If I recall correctly, we added equipment to the Reel's Cove operation during '55 and '56.

"Q. To any appreciable extent?

"A. I really don't know because I wasn't that familiar with the operation at the time, but I do recall that there were proposals put up to the board to approve additional equipment.

* * * * * * * * * *

"Q. When did you first give serious attention to plans for a new major mine?

"A. When I arrived in January of '58.

2558 "Q. Who did you have look into the problem?

"A. At that time Mr. McFarlin, Sr. and Mr. McFarlin, Jr. were both looking into it.

"Q. Did they come up with some fixed written plan for a new mine there?

"A. Yes. It was a product of their thinking and discussions among us that the original Morganville plan was generated.

"Q. It was my understanding that you engaged Robinson and Robinson, Engineers, in 1960 to come up with a definite plan for that mine.

"A. Yes, that's right. There had been preliminary work done by company people and it was felt that we should have outside counsel on a project of that size.

"Q. Well, actually you had even thought of building a large mine before that, hadn't you?

"A. Oh, yes.

"Q. Before 1960?

"A. Oh, yes.

"Q. You had even thought in terms of constructing a large mine back in 1958, actually doing the construction back in 1958 or 1959, hadn't you?

"A. Well, it was purely planning in '58, '59, and we got more to the point of doing something about it, but the end of Reel's Cove wasn't in sight at that time; at
2559 the rate of operation we had, it was anticipated that Reel's Cove would run probably until 1963 or 1964.

"Q. What reason for that, I take it, was that you had hopes of getting an additional block of land, the Lucinda Palmer tract, didn't you?

"A. The Lucinda Palmer tract was a subject of controversy between Consolidated and Tennessee Products, from what I have heard, for 10 or 15 years.

"Q. Well, nevertheless, in the late 1950s Tennessee Products had hopes of getting ahold of that tract which would have extended the life of Reel's Cove?

"A. That's right.

"Q. But that fell through, didn't it?

"A. Well, I wouldn't say it fell through, it just plain never happened.

"Q. But you gave up on it, more or less, around the end of the '50s, didn't you?

"A. Well, no. I would say it was a matter that was considered right up until late '61. I don't recall exactly when the change in Consolidated occurred, when Hampton stepped down, but it was just about that time—well, no, it was actually after that time by a few months before it was finally a dead duck.

"Q. Your reference now is to 1961 and the Lucinda Palmer tract? Are you referring to negotiations
2560 which were entered into about that time for the merger for Products and Consolidated?

"A. No. The Lucinda Palmer tract was—I would say a dead issue at that time—it would have been impossible for it to have been mined from Reel's Cove.

"Q. In any event, it became urgent by 1960 that you do something about a new mine, is that right?

"A. If we were going to stay in the coal business it was our opinion that we would have to form a new mine. The demand for coal improved substantially in '61.

"Q. Now, at that time Tennessee Products as a corporation was in somewhat of a financial strait-jacket, was it not?

"A. It had been for some time.

"Q. Would you say that its liquidity had declined substantially since the Merritt, Chapman interest had taken over?

"A. Its obligations had increased substantially because of expansions in other areas.

"Q. In any event it wasn't liquidative in 1960, was it?

"A. That's right.

"Q. Is it true that practically all of the major expansion of Tennessee Products prior to 1960, after the time that Merritt, Chapman took it over, occurred at
2561 Rockwood in connection with your plant there?

"A. A substantial portion of it was there, without question.

"Q. What is the nature of that business?

"A. Electric furnace ferro alloy business.

"Q. Is that business largely—the welfare of that business largely tied to the welfare of steel?

"A. Correct.

"Q. Does your business at Rockwood use coal?

"A. Indirectly, as coke.

"Q. Did your business at Rockwood use the products of your mines at Whitwell?

"A. To the extent that the coal from Whitwell was coked at Chattanooga.

"Q. Did not your business at Rockwood seriously decline from 1959 to 1960?

"A. Yes. The whole industry declined."

Mr. Rayson: Your Honor, I think that was 1955 to 1960 that the business of Rockwood declined and Mr. Rowntree agrees.

"Q. And yours in particular declined at Rockwood?

"A. Because of the decline of the government stockpiling program, in which Tennessee Products was pretty heavily involved.

"Q. Did not this seriously affect the revenues
2562 and profit of your coal mining operations at Whitwell?

"A. No. I wouldn't say it had much effect on it, if any. The volume of coke—the volume of coal used by the coke plant for coke for Rockwood was negligible as compared to the amount of coal mined.

"Q. Mr. Baum, did you not, or did not Merritt, Chapman and Scott repeatedly tell the stockholders that its coal mining operations at Whitwell were declining because of the fact that you weren't able to use as much of the coal at your Rockwood plant?

"A. No. I believe that what they told the stockholders was the decline in coal was due to the decline in steel, which was true because we supplied Republic Steel, and as their requirements went down our coal mining activities declined.

"Q. So you are saying that these references in the annual reports to the distress at your coal mine was tied to the—

"A. To the steel industry.

"Q. And to the decline in the market you had with Republic Steel, is that right?

"A. That is correct.

"Q. And not the decline at Rockwood?

"A. It had a minor effect, if any.

"Q. In any event, you did represent at that time

2563 that your distress at Whitwell was occasioned by the decline in the steel industry?

"A. Yes, sir.

"Q. You did that repeatedly, did you not?

"A. Well, it was the truth, it not only affected the coal mines, it also affected the ferro alloy part."

Mr. Rayson: At this point Mr. Rowntree stated, "Let me ask, what do you mean by 'distress' in this questioning?

"Mr. Rayson: The general decline of its business, its coal mining business, in Whitwell.

"Mr. Rowntree: You mean the market?

"A. Coal sales.

"Mr. Rayson: The market and coal sales.

"Q. Had the decision to go into the small mechanized mines been made before or after you arrived at Tennessee Products?

"A. Before.

"Q. Had you concurred in that decision as a director?

"A. I wasn't involved in it.

"Q. You were aware of the fact that the company had planned to direct its small mine operations toward mechanization rather than towards hand-loading as it had in the past?

"A. Yes, I was aware of it.

"Q. Were you aware of the fact that this had re-
2564 sulted from the insistence of the TVA?

"A. I was aware of the fact that it was a condition of the TVA contract.

"Q. When were you first advised, Mr. Baum, that it would be necessary for you to have outside financing for the new mine?

"A. The first time I brought up the Morganville project at the board.

"Q. Was that in 1960?

"A. I don't recall exactly when it was, but it was shortly after we had the Robinson and Robinson report.

"Q. Were you recommending the mine at that time?

"A. Yes, sir, I was.

"Q. I believe you were recommending it on the basis that it could be a profitable business, a going business, and be operated under the National Bituminous Coal Wage Agreement?

"A. Originally, yes.

"Q. Did you realize at that time that Tennessee Products could not finance this mine on its own?

"A. I had hoped that Merritt, Chapman would be able to assist us in financing it.

"Q. Then you did realize that Tennessee Products could not do it on its own, is that right?

"A. That's right.

2565 "Q. In fact, Tennessee Products could hardly do anything without the approval of Merritt, Chapman at that point, could it?

"A. Well, we were tied in two directions, one, by outside financing, and the other by our obligations to Merritt, Chapman.

"Q. So realizing that Tennessee Products could not finance this mine on its own, you went to Merritt, Chapman, is that right?

"A. That was normal procedure.

"Q. And Merritt, Chapman told you that it would not finance the mine, is that correct?

"A. It could not.

"Q. I could not?

"A. At that time.

"Q. As a matter of fact, 1960 was a rather disastrous year for Merritt, Chapman, wasn't it?

"A. That's right.

"Q. These disasters had little to do with Tennessee Products, is that right?

"A. That is right.

"Q. And, so, you were given the instructions that if you were going to build a new mine, you would have to scratch up the money on your own, is that it?

"A. I would have to figure out how to do it.

2566 "Q. When did you start looking for outside money?

"A. At that time.

"Q. When do you think that was, can you give us some date?

"A. I'd say the latter part of 1960.

"Q. The latter part of 1960?

"A. As a point of reference, what is the date of the Robinson and Robinson report?

"Mr. Rowntree: It was about in May, I believe, of 1960.

"A. Well, it would have been the fall of that year then.

"Q. You had not started looking for financing until the fall of that year, is that correct?

"A. That's correct.

"Q. Were you advised of the fact that Mr. Travis had told the men at Whitwell in May of 1960 that the whole project was killed because four or five of them had gotten out of line?

"A. That was the truth at the time. In fact, we refrained from even submitting the Robinson and Robinson report to the board because of the labor conditions.

"Q. But you went ahead and did that afterwards?

"A. When things simmered down then we would go back to work on it and then we would have another flare-

2567 up of labor disturbance and it would be tabled again and that was the condition that existed right through the entire period.

"Q. But, in any event, this reference to this incident by Mr. Travis, whatever it was, whatever Mr. Travis was referring to in his notice of May the 7th, did not effectively

kill the plans of the mine, as you have indicated on your direct examination?

"A. I'd say it delayed it four or five months.

"Q. Well, did you reach definite plans to spend two and one-half million dollars later that year?

"A. We proposed it later that year.

"Q. But you didn't have definite plans to do it, though?

"A. Well, you can't plan until you have some source of funds. We actively pursued it later that year.

"Q. Did you give up on these plans later that year?

"A. The project was shelved three or four times from then until the time I left the company.

"Q. Did you give up on it later that year? Did you shelve it later that year?

"A. I don't know whether it was later in '60 or early in '61, but right in that period we shelved it again.

"Q. Why did you do so?

"A. Because of labor problems.

"Q. Then you found that the problem was transi-
2568 tory and you considered it again?

"A. That's right. We were always hopeful and optimistic that we could reach some sort of an equitable operating arrangement which would permit a smooth flow of coal and level of employment.

"Q. Who made these decisions to shelve and unshelve these Morganville plans, was that your decision?

"A. It was decisions reached at the discussions of the executive committee and the board.

"Q. Was it your recommendation?

"A. In some instances, yes, I'd say in most.

"Q. Do you know Mr. W. W. Glenn?

"A. Yes.

"Q. Was he an employee of yours at that time?

"A. Yes.

"Q. I take it he is a truthful man?

"A. He is if I ever met one.

Deposition of Rolland O. Baum—Cross

"Q. Are you familiar with the matter that went before the Interstate Commerce Commission?

"A. Yes.

"Q. Concerning a rail rate into Bridgeport, Alabama?

"A. Bridgeport, Alabama?

"Q. Widows Creek.

"A. Oh, Widows Creek, yes.

"Q. And you are familiar with the rail rate the
2569 TVA obtained from the L&N?

"A. Yes, sir.

"Q. Are you familiar with the fact that this occurred in 1960?

"A. I thought it was later than that.

"Q. Did you decide to have Tennessee Products protest this Section 22 rate before the Interstate Commerce Commission?

"A. I was a part of the decision, yes.

"Q. You authorized Tennessee Products to go forward in that protest?

"A. That's right.

"Q. Jointly with—

"A. Tennessee Consolidated, right.

"Q. Are you familiar with any of the verified statements that were presented on behalf of Tennessee Products at that time?

"A. I'm not familiar with the details of the case, no.

"Q. I want to show you this statement and ask you if you have any familiarity with that. That is the statement of W. W. Glenn.

"A. No. I did not get into the detail of the case at any time other than on a broad basis, such as reports to me as to the status of the case.

2570 "Q. Are you familiar with Mr. Glenn's signature?

"A. Yes. That's his signature."

Mr. Rayson: Your Honor, we offer this as an exhibit to Mr. Baum's testimony.

The Court: Exhibit No. 263.

(The statement referred to above was marked D263 and received in evidence.)

(The reading of the deposition was continued.)

"Q. I am referring to Page 18 of this statement, Mr. Baum, and this is what he says:

"'At the time we learned of the facts concerning the rates and conditions attached to the Section 22 Schedule from the L&N mines in Western Kentucky, we had plans for making capital expenditures of about two and one-half million dollars to open a large new mine at Whitwell for the purpose of supplying coal to TVA at Widows Creek and others. However, as soon as the L&N's action had been completely analyzed and its effect evaluated and applied to our future expectations from the standpoint of amortization and the profits of the proposed mines, we decided not to make the investment.'

"Now, does that represent the situation as it existed at that time?

"A. It was certainly a factor in it. I would say Mr. Glenn's knowledge of the board's action and board discussion was somewhat negligible. He was not a
2571 party to either the executive committee or board meetings, and he undoubtedly was not familiar with the financial requirements. It was known that we were trying to work out a plan to build this mine, yes, and I'd say his statement, based on his knowledge, is correct.

"Q. On Page 21 he makes this statement:

"'To move our mining operations to the proposed Kelly's Creek area it would cost my company about two and one-half million dollars and as the L&N would not build the tract without reasonable insurance of tonnage, neither would we invest in the mine. We could only guarantee tonnage to the L&N to the extent that TVA would be willing to purchase our coal. We could sell only at a price which would permit us some return on our investment. I under-

stand the TVA's position to be that it can purchase coal only on the lowest bid. This left us no alternative. We could not bid against the Western Kentucky price evaluated at bottom upon the complained of rates.'

"Does that represent the position of the company at that time?

"A. I think it is a fair representation.

"Q. So it was the rate this Section 22 rate, that Mr. Glenn was talking about?

"Mr. Rowntree: Object to the form of the question.
He has pointed out a number of factors; the West
2572 Kentucky price, the cost of operating the mine under
the National Bituminous Coal Wage Agreement, and so on."

"Q. So it was the rate that prompted you to abandon the mine and not labor difficulties?

"A. I'd say that the rate was a factor.

"Q. You said it was the factor, didn't you?

"A. Mr. Glenn said it was the factor, I said it was a factor.

"Q. Which of your executives had charge of this Interstate Commerce proceeding as to the position of the Tennessee Products in the Interstate Commerce proceedings?

"A. Tennessee Consolidated was the lead of the two companies.

"Q. Which of your people was looking after the affairs of Tennessee Products in this hearing?

"A. Mr. Glenn.

"Q. Was he the only one?

"A. I believe our house counsel, Mr. Moody, was acting with him.

"Q. Mr. Moody was present at all times?

"A. Not necessarily. I don't know that.

"Q. He was certainly familiar with the statement of Mr. Glenn, wasn't he?

"A. I would assume he was.

"Q. And you would assume that Mr. Moody would
2573 have been familiar with these other matters that you have been discussing, too, wouldn't you?

"A. No more than Mr. Glenn.

"Q. Well, didn't he participate or sit in on the meetings of the board and other executives when they made major decisions there?

"A. No, sir, he did not.

"Q. Was he not fully familiar with the affairs at Whitwell?

"A. No. I would say the only one that was fully aware of those affairs, other than myself, would have been Mr. McFarlin at that time. I believe you said that was in September of '60?

"Q. The statement was made in '62, sir. Mr. Baum, is it true or false that you would have started on the Morganville Mine in May of 1960, except for the disturbance of some four or five men that Mr. Travis refers to in his memorandum to all employees of May of 1960, but for that would the mine have been started that month?

"A. No, it couldn't have been.

"Q. It couldn't have been, could it?

"A. No.

"Q. It's conceivable that it could have been started at that time?

"A. Well, we just got the report.

2574 "Q. Just got the report. And you didn't have the money?

"A. That's right.

"Q. And, for that matter, you didn't even have the approval of Merritt, Chapman, at that time, did you?

"A. That's right.

"Q. And if these employees were told that the mine would have been started that month but for that, except for their indiscretion, this was a falsehood, was it not?

"A. If they were told that the mine would have started in May?

"Q. Yes, sir.

"A. Yes. However, I would like to amplify that to this extent, that the conditions stopped the consideration of it, which was all that was going on at the time. Now, it stopped it only for a reasonable period of time until the situation appeared to be clearing, and then it was again up for consideration. As I mentioned before, the Morganville Mine was on and off at least a half a dozen times over a 3-year period in various stages.

"Q. But after that, after May of 1960?

"A. Yes.

"Q. Do you know whether there was any agreement reached with the union with respect to the rights of the Reel's Cove employees to be employed at the mecha-
2575 nized mines upon the expiration of their employment at Reel's Cove?

"A. I believe there was an agreement of some kind. I don't know what it was, and I believe it was before my time at Tennessee Products as to the employment of the members of the Reel's Cove panel at the Widows Creek mines. I don't know of any other agreement."

Mr. Rayson: In order that the answer will be clear, your Honor, Mr. Rowntree stated just before that answer, "You are talking about mechanized truck mines?

"Mr. Rayson: That's right."

And then the other that Mr. Owens just read.

Mr. Owens: Well, I think it's an error in the transcript, it says "Griffith's Creek."

Mr. Rayson: Yes.

(The reading of the deposition was continued.)

"Q. Are you aware of the fact that the claimed violations of that agreement resulted from shutdowns of your mining properties at Whitwell?

"A. I've heard a lot about this agreement. I don't know

of its having been given official status at any time, and I don't know of our having breached it.

"Q. My question was: Claim of violation of that agreement?

"A. Possibly in '58, I don't recall after that.

2576 "Q. Do you recall any work stoppage which resulted from the failure of your mechanized mine operators to pay vacation pay?

"A. I have a hazy recollection of a stoppage of that type, yes. As I recall, arrangements were made to take care of it and the stoppage was over.

"Q. I take it then that you also recall that the company or truck mine operators that had these small mechanized mines, had failed to fulfill their obligation at that time?

"A. I have that recollection.

* * * * * * * * * *

2578 "Q. Did you participate in any way in the negotiations of the contract with the United Mine Workers in the fall of 1962?

"A. In the fall of 1962, no.

2579 "Q. You did authorize your company to join the Sewanee Coal Operators Association?

"A. No.

"Q. You did not?

"A. No. In fact, I don't think the company ever joined the Sewanee Coal Operators Association. We had no mining operations ourselves at that time.

"Q. If the records show differently, I take it you would stand corrected?

"A. If the records show differently, I would stand corrected.

"Q. Were you still looking after the coal mining business at that time, Mr. Baum, in the fall of 1962?

"A. Yes. It was part of my responsibilities, yes, I was trying to straighten my mind as to when Merryman left.

"Q. You closed Reel's Cove in January of 1961?

"A. January of '62.

"Q. January of '62. I beg your pardon.

"A. Right. Subsequently to that, we cancelled our contract with the Mine Workers, the company's contract. I don't recall having any further negotiations with the Mine Workers for a contract because we had no company coal operations.

"Q. At the time you closed it was Reel's Cove effectively exhausted?

2580 "A. As far as normal mining conditions were concerned, yes.

"Q. There could have been some robbing work done after that if you had wanted to do it?

"A. Right.

"Q. Were your mining operations in Reel's Cove, as you approached the point of exhaustion, an increasing distance from the portal of the mine?

"A. Yes.

"Q. Did these factors result in a substantial increase in the cost of operating your mine?

"A. Obviously the further back you got the greater your hauling cost was.

"Q. Your cost became rather excessive in the last year or so as you were scrounging around to exhaust the mine, I take it?

"A. Yes.

"Q. And this is the reason that the costs of your mine became high?

"A. Well, it is certainly a factor.

"Q. Certainly the costs in your mine in the last year or two of your operation were not indicative of the potential of that mine over all of the years of its operation?

"A. That's right.

REDIRECT EXAMINATION

2581 (Mr. Rowntree read the questions and Mr. Owens the answers.)

"Q. Mr. Baum, were the costs projected by the engineers for the proposed Morganville Mine in the various reports always based on the National Bituminous Coal Wage Agreement as to the costs?

"A. I believe they were.

"Q. Where was the coal proposed to be sold from the Morganville Mine?

"A. To TVA and Republic Steel.

"Q. Who was to be the largest customer?

"A. Republic.

"Q. On the long-range basis, do you recall, Mr. Baum, Mr. Merryman's proposal with respect to Morganville and dated April 24, 1961, particularly Page 2? On Exhibit 257, does that reflect the long-range proposed customer sales?

"A. Yes. I am sorry, the answer I gave had reference to our original conception of Morganville.

"Q. In this long-range view, was it that TVA coal would be the predominant customer?

"A. That's right, 50 per cent or better. That was after the Widows Creek expansion had been announced.

"Q. Was the cost of producing that coal under these various reports such that you had a large margin of profit under this operation for your potential customers?

2582 "A. I never saw a projection on coal mining in Tennessee Products that had anything but a nominal profit in it, nominal or marginal.

"Q. What effect would a reduction in freight rates from West Kentucky field to Widows Creek to the Steam Plant of TVA have with respect to that nominal margin of profit?

"A. Well, if you are talking about a reduction of a dollar, it would eliminate it.

* * * * * * * * * *

2583 PAUL V. CALLIS,

a witness called at the instance of the plaintiffs, being first duly sworn, was examined and testified as follows:

Testimony of Paul V. Callis—Direct

DIRECT EXAMINATION

By Mr. Rowntree:

* * * * * * * * * *

2584 Q. Now, Mr. Callis, will you give a history, just a brief history of the deep mines, the big deep mine
2585 on the Tennessee Consolidated property from the time you went there up to, say, 1957?

A. Yes, sir. In October of 1944, excuse me, '45, I worked underground in the Palmer Mine, which was a large mine employing about 525 miners and producing about 2500 tons of coal per day double shift.

The first job I was assigned was to install a conveyor belt, which turned out to be one of the first conveyor belts installed in the State of Tennessee.

The company was averaging a productivity at that time of about 500 tons per man day per man shift. The mining of coal is broken down into, you might say, two phases, that is, one, the producing of the coal and, two, the materials handling of it to the surface.

Most of my effort from 1945 to '47 was confined to materials handling, getting the coal away from the face to the tipple.

In 1947 the company wanted to upgrade the commissaries and wanted to put them to self-service from the old type country store and I was assigned that job. I was on the service for about a year. Also in 1947, since no loading machine had ever been introduced in the Sewanee seam, we offered our first Jeffrey CLR loading machine, excuse me, correct that, the machine came in earlier than that but we installed it in the mine called Bear Pen Mine, which
2586 was a new modern section of the Palmer Mine. We installed two CLR machines and alongside of that two Goodman power duck bills, this is a shaker conveyor.

Q. Were these the first set of loading machines in the Sewanee seam, you say?

A. Yes, sir. The first rubber-tired mobile loading machine in the Sewanee seam in Southeast Tennessee.

Of the two types of loading machine the CLR machine proved out to be more productive. In the meantime, hand-loading in the large Palmer Mine, which is achieved by the undercutting of the coal, shooting the coal down and shovel loading onto a face conveyor and conveyor to belt, excuse me, conveyor to rail drop-bottom cars to carry it to the surface, and in the new section where we were experimenting with belts it would be hand-loading to chain conveyor to belt to drop-bottom loading.

After this was studied and worked out and it was finally decided that we could abandon the Palmer Mine and moved to a new mine, which is known as or was known as the Coal Valley A section, that is the A mine of Coal Valley. Coal Valley is a geographical location in the Bear Pen Gulf.

In 1949, as I recall it was March the 6th of '49, we turned on that mine. It was a hundred per cent belt conveyor, a hundred per cent CLR loading with wall cutting machines, chain conveyor feeding the belts and the belts to the
2587 surface.

This mine ran until 1954. This mine also was very successful in that the productivity factor had jumped up to about nine ton per man from five.

We went on to drive this mine 4,000 feet deep and then retracked back to 2,000 feet and turned entries to the right to follow the topography of the mountain and created what is known as B section of the A mine. This mine was retreated completely, retreated and pulled out in approximately 1954.

The Coal Valley C Mine was developed while the men were still working in the A mine. This is a sister mine to the Coal Valley A, it's Coal Valley C.

In my opinion the mining is done much in the same manner, instead of five units we increased up to nine units. These mine units composed of 512 cutting machines, CLR

loading machines, chain conveyor, 61AM chain conveyors, and 30-inch conveyor belts, two main motor belts and three cross-entry belts feeding the coal from the various sections back to the main belts and to the surface. This transported 1300 feet of belt conveyor across the hollow and into the original loading bin.

In 1956, competition being extremely keen, we made some studies on eliminating this long rail haul from Coal Valley back to the old Palmer tipple '55-'56 and we developed tractor-trailer hauler units and converted our loading
2588 station into a truck-loading station and we trucked the coal from Coal Valley back up on top of the mountain and back to Palmer, thus eliminating four miles of rail haulage.

* * * * * * * * * *

2591 Q. What rate of production did you attain in Mine C?

A. In the C mine in late '56 we were running in the neighborhood of 10 to 12 tons per man, I think we reached 12, maybe 12 and a half tons of proven productivity at that mine because, as I recall, in October of that year I was preparing a long-term bid for TVA and they insisted that we substantiate certain factors pertaining to productivity before they would entertain an offer by the company of a long-term contract.

Q. All right. At this time were you still using the CLR loaders?

A. Yes, sir, nine of them.

2592 Q. And will you state what experience you had through different mines that you mentioned with respect to the thickness of the seam of coal?

A. Well, the Sewanee seam will vary from a pencil point to, I have seen it in pockets seven feet, but more realistically I'd say 90 per cent of the seam would be considered between 27 inches and 40 inches with an average, I would say, of 36 to 38.

Q. Now, is this a regular thickness throughout this Sewanee seam or is it irregular?

A. It's very irregular in the sense that the bottom undulates and the top rolls, but they are not coincidental.

* * * * * * * * * *

2596 By Mr. Rowntree:

Q. Mr. Callis, how many truck mines do you recall were in the Pocket on your property, can you give us the numbers when you started and have they increased in number?

A. Yes, they have increased in numbers. I couldn't tell the number at that time but I believe I could name them, Willis Flynn mine was in operation, the R. B. Ivey mine was in operation, the Earl Patten mine was in operation and the Jim Patten mine, and the North End Coal Company, they were in the Bee Branch area of the Pocket.

Mr. Combs: Was this in 1945?

The Witness: Yes, sir. To the best of my knowledge they were in operation. In the Floyd Hollow area was the Hampton-Patrick mine, which later became the Sanders mine, the Charlie Morrison mine, the Howard Higgins mine. There was one other mine there, I can't recall the name of it, there were four in Floyd Hollow and six or seven

2597 in Bee Branch.

Q. Did you have also some truck mines over around Palmer?

A. Yes, sir.

Q. Now, let me ask you this: How old is Tennessee Consolidated Coal Company, when was it formed?

A. Organized in 1905, so it would be 60 years old.

* * * * * * * * * *

Q. How many acres does Tennessee Consolidated own, coal producing acres and total acreage?

A. To the best of my knowledge the coal-bearing

2598 land is in 38,700 acres and the total surface acreage is approximately 50,000 acres.

* * * * * * * * * *

Q. All right. Now, to what extent did the United Mine Workers represent the employees in the Tennessee
2599 Consolidated Mine, to what extent did they represent the employees of the Tennessee Consolidated mines?

A. A hundred per cent.

Q. To what extent did they represent the employees in the truck mines on Tennessee Consolidated property?

A. A hundred per cent.

* * * * * * * * * *

2600 Q. Now, what was Whitwell Coal Corporation?

A. Whitwell Coal Corporation is a coal mining corporation that is operated on leased lands of Tennessee Consolidated Coal Company in Sequatchie County in the area of Daus or Dunlap, halfway between on the Riddle tract, about approximately 10,000 acres.

This coal mining company was organized in 1927. It was operating mines to supply railroad fuel to the NC&St.L Railroad when I joined the company and it was closed down in 1947. The Whiteo Mine was closed down in 1947 because of the quality of the coal, sulphur kidneys, as I remember. we ran into a pretty bad condition of sulphur.

Q. Was this operation north of the Daus Mountain?

A. Yes, sir.

Q. Now, did that company become a sort of a sales agency company after that?

2601 A. Yes, sir.

Q. Did it handle the bids for the coal for the truck mines on Tennessee Consolidated property with TVA?

A. Yes, sir.

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2615 Q. All right, sir. What was the principal market in that year, 1952, and in the year of '53 for the Tennessee Consolidated Coal Company?

A. Tennessee Valley Authority, Widow's Creek Plant.

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2622 Mr. Rowntree:

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2624 The Supreme Court has held that the union does violate the Anti-Trust Law when it takes an agreement negotiated with one set of employers and pursuant to the agreement with that set of employers takes that contract to another group of employers and forces it on them with the purpose and intent of destroying or hurting the competition of that group, the second group.

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2646 Mr. Combs: We object to that exhibit on that ground. What has this witness got to do with finding that in the file? Is the witness testifying that that is accurate or that it was printed? I don't follow you.

The Court: Yes. What is the purpose when this exhibit is already in the record?

Mr. Rowntree: All right, sir. The Whitwell Coal Company, a subsidiary of Tennessee Consolidated, obtained a contract February 18, 1955, at Colbert, evaluated and awarded at Colbert by TVA. Shortly thereafter the UMW, that was for the Pocket truck mines involved in this case, shortly thereafter the UMW Journal had this article about the awarding of that contract and shows its purpose to knock out the local producers, including these plaintiffs, from the TVA market.

2647 The Court: Well, you already have the exhibit in, Mr. Rowntree. What is the difference, whether the original 158 is in the record or whether you introduce another copy of the same exhibit? That seems to be the issue at the present time.

Mr. Combs: Any *any* connection that this witness may have except that he found that in his own file.

Mr. Rowntree: Well, I suppose it is not material whether it was in the file or not, but we would like to read this exhibit at this time.

Mr. Combs: Well, we object to that because it's out of

order on the witness, he is not proceeding with his witness.

Now, we had an argument over that when it went in and he hasn't asked the witness any questions that will throw any light on that about the exhibit and we object to it and we think it is argumentative.

Mr. Rowntree: I want to ask the witness some questions concerning the period of time after this article appeared.

Mr. Combs: I think in reference to date and ask about the dates and what happened, but just to read that as an exhibit.

The Court: Well, in an effort to understand what Mr. Rowntree's purpose is at this point I am going to
2648 allow him to read what portion he wishes to read of Exhibit 158 and then see if he can proceed with the examination of this witness. I can then determine whether there is any relevancy from what he is reading and the examination of the witness.

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2650 Mr. Combs: I object to the question and move to strike it. I submit that the article clearly is within the doctrine of the Noerr doctrine that this activity on the part of the defendants through the Journal in complaining to a government agency about the enforcement or the lack of enforcement of law and their statements about that is privileged insofar as the Anti-Trust Act is concerned, it's clearly within the Noerr doctrine and it's clearly within the Pennington doctrine and refers to evidence dealing with Walsh-Healy or TVA and government agencies there.

2651 Now, apparently counsel here is trying to prove through this witness that the statements in here are not true. I don't know what that has to do with this lawsuit. If he is testifying that these companies that he is talking about here specifically were not black listed, I think that the best evidence would be coming from the companies. I don't know that he mentioned a specific company, did he?

Mr. Rowntree: Yes, sir, Whitwell Coal Corporation.

The Court: I believe I will overrule the objection, allow the examination to proceed.

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2652 Now, turning back, Mr. Callis, to the fulfillment of this contract awarded to Whitwell Coal Company for the Pocket Mines that was originally awarded at Colbert, being 8594-A, will you state*d* what happened after this UMW Journal article appeared with respect to the fulfillment of that contract?

2653 A. We experienced quite a bit of difficulty in the supervision of the Federal Mine Safety Code by the Federal Mine Inspectors and considerable complaint on each and every violation.

To clarify that for the Court—

Mr. Combs: (Interposing) Now, we object to the answer to that question and move to strike it.

Mr. Rowntree: I asked about fulfilling the contract.

A. We had difficulty fulfilling it.

Mr. Combs: I object to the testimony that the Federal Mine Inspectors started giving him trouble and the answer of the witness on the Federal Mine Inspectors.

The Court: Sustained.

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2665 Mr. Combs: (Interposing) Now, we object and move to strike the last part of the answer to that question, that "Mr. Gilbert established a picket line."

We suggest that that is a conclusion that the witness can't draw. He can tell what Mr. Gilbert may or may not have done that he has knowledge of, but we move to strike the last answer.

The Court: I believe I will overrule the objection and allow you to cross examine him upon that.

* * * * * * * * * * *

2675 Q. Mr. Callis, did the Coal Valley Mine shut down
2676 in 1957?

A. Yes, sir, due to the lack of business and our old contract running out, the Coal Valley Mines shut down in the spring of '57 just prior to the beginning of new business that started June 10th.

Q. Nineteen fifty-seven?

A. Yes, sir.

Q. What was the business that you started on at that time?

A. The business we started on June 10th was the T4 contract with TVA.

Q. Was this for the big mine on your property, Coal Valley?

A. Yes, sir.

Q. What was this T4 contract?

A. The T4 contract was the contract designed to reduce the price of the coal to TVA through productivity, increased productivity through mechanization. It was an incentive type contract to the consumer.

Q. Did it require the attainment of a certain productivity per man per shift in order for the contract to continue?

A. Yes, sir.

Q. What was that productivity requirement?

A. Seventeen and a half tons per man but not less
2677 than 14 tons per man.

* * * * * * * * * *

Q. Mr. Callis, did you have a test period to attain this requirement?

A. Yes, sir.

Q. What were the test periods that were set up?

A. The contract starting date was June the 10th and the company through the contract was given until the 1st of January, 1958, to make certain purchases of new machinery to increase the productivity of the mines. The first test period of January of '58, first six months of '58, second test period was the last six months of '58.

Q. Did you have any other test period besides those two?

A. Yes, sir, by contract amendment or agreement, the first six months of '59.

Q. All right, sir. Now, what did you do in order to meet the requirements of this contract?

A. We made, Tennessee Consolidated made ex-
2678 penditures in the neighborhood of $460,000 in new belts, new loading machines, new chains for the pan line conveyors, several new short wall Goodman 512 cutting machines, a new hydraulically operated belt head with automatic electric switch gear on it. This item I mentioned because this one belt head cost $25,000. A hundred thousand dollars worth of trucks to haul the coal from the mine back to Palmer, and we very carefully went over all of the equipment to switch gears and equip the mine with two-way radio by wire to be able to have the best communications between the underground and the surface to increase the efficiency.

Q. Were you able to obtain the productivity during the test period of the contract as required by the contract?

A. No, sir. During the first test period we were not. The first six months of '58 we were not disappointed but at the same time we were not pleased. What caused that was the slowness of delivery of some of the new loading machines which ran on into that period which actually didn't give us a full test period, it was through this reason that they moved the test period in the last six months of '58 to the first six months of '59.

Q. What was your experience during that test period?

A. We reached 11 tons per man, approximately 11 tons per man in the first six months test period, which I
2679 am now referring to as the last six months of '58.

Q. Is this a copy of the productivity report that was submitted to TVA with respect to that test period?

A. Yes, sir.

Q. And what does that show?

A. "Productivity—all UMW members, employee-UMW members, 11.106; supervisory and clerical, 1.460, total of 12.566 tons per man."

Q. I think that clerical reads "1.4". It is difficult to read. The total is what?

A. The total is 12.566.

Q. All right. Will you file that as the next exhibit?

The Court: Exhibit No. 280.

(The document referred to above was marked P280 and received in evidence.)

Q. Did you have any labor difficulties in the course of that period?

A. Yes, sir.

Q. What was it?

A. Absenteeism. Soon after the contract got under way we had a problem of getting the men to work. This absenteeism reached a percentage of total UMW work force showing absenteeism of 18 per cent of the workers of that mine.

2680 Now, this was arrived at over total man shifts offered against man shifts paid for. A very careful study with a report sent to the district office of the United Mine Workers and formal complaint made.

Q. Does this file of daily crew reports show the absenteeism of the loss of man shifts during the period of that contract?

A. Yes, sir.

Mr. Rowntree: We offer that as the next exhibit.

The Court: Exhibit No. 281.

Mr. Combs: We would like to see it.

The Court: Yes, sir.

(The compilation referred to above was marked P281 and received in evidence.)

Mr. Combs: I would like to point out to the Court in this exhibit, not the one presently but the last one exhibited

that they have their exhibit couched in terms of "employees —UMW members and supervisory-clerical" as a distinction. Now, actually counsel agrees that there is no significance to be attached to the UMW description, it's production employees to distinguish between clerical and I don't know why that "UMW" but counsel admits there is no significance in that and I would like to point that out.

Mr. Rowntree: He is referring to Exhibit 280 and
2681 that is correct.

Mr. Combs: The exhibit offered, that counsel offers now has a great number of exhibits, supposed to be production man shifts lost, et cetera, these months.

Now, we don't object to it but we don't know what is in it. We do not accede to the facts of it and if counsel would, I think it might save a little time, he started on a line of questionings saying that a complaint—the witness has testified that the complaint was based on this answer that he forwarded to the district. Unless he tries to make a point of it I would suggest that he ask the witness what happened to it as a result of that complaint. I think it would be more in order.

We have no objection to the exhibit but we don't accede to the truth of it. We don't know what is in it.

Mr. Rowntree: We offer that as the next exhibit.

The Court: Very well, Exhibit 281.

Q. What are the papers contained in that exhibit, Mr. Callis?

A. They are the daily crew reports of the Coal Valley Mine.

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2682 A. It shows each production unit by number, it shows the number of men, it shows the number of cuts of coal, the footage, the width of the place, the coal height, the tonnage, that is, tonnage produced, the tons per man per each unit on that given shift and the conditions in the place with respect to roof conditions.

At the bottom it lists each man who absented himself from work that shift by name, it reports the man shifts lost total, it reports the total tonnage, total tons per man, total cuts, total footage, total number of man shifts, total number of days worked and total number of days lost.

Q. Mr. Callis, I notice in that exhibit that your tons produced per man is quite high, considerably higher than as shown in 280.

Will you explain that?

A. On the face of this sheet you are referring to the actual tons produced at the face, it does not take into account clerical and supervisory as shown on the other exhibit.

Q. What about other underground employees besides at the face or outside of it?

A. Outside employees are not all shown on this but this is production people that are working underground.

2683 Q. Would the TVA allow you to use the tons productivity shown on that exhibit 281?

A. They permitted the use of this, in fact, they audited these but they also insisted that the maintenance employees on the surface, as well as supervisory and clerical, had to be added realistically to give the true productivity of that contract.

Q. Is that the way that the productivity report 280 was prepared?

A. Yes, sir.

Q. Is that the normal way of determining productivity per man in the industry?

A. Yes, sir.

Q. Now, you have testified that complaints were made to the district about this absenteeism. Will you state what happened concerning that?

A. I was assigned the job of working up this productivity because it was a part of the sales contract. In other words, the productivity factor in the contract with TVA

was vitally important as to whether we were able to keep this contract.

This contract T4 was for a 10-year period, a maximum term, and a minimum term of 24 months. It was a sales job contract price, but it was assigned to me to dig into the absenteeism.

2684 I reported it to the district. The district started an investigation. We had no action.

Mr. Combs: Well—

A. (Interposing) On the local level at the mine.

Mr. Combs: I object to the answer using the word "district". I think he should use who he talked to, after all, there are people that are district representatives.

A. I dealt directly with Mr. James Ridings, the president of District 19, and Mr. Albert Pass. Mr. Pass came to Palmer. We complained about this. We had correspondence about it and finally he came to Palmer and met with the men in the bath house in October of 1959.

The test period was all over and we had failed and he just, well, just as well not talked to them.

Q. Did his talk have any effect on the absenteeism?

A. Yes, the men resented it.

Q. Were you there?

A. Yes, sir.

Q. Do you recall when Mr. Pass gave this talk?

A. The best I can remember it was October 14th.

Mr. Rayson: What year?

The Witness: Nineteen fifty-nine.

Mr. Combs: Did I understand the witness to testify that he was present?

THE WITNESS: Yes, I said I was present.

2685 Q. Now, did the TVA allow you to continue to ship coal on this contract after the termination, June 1959?

A. Yes, sir, there was a six months' extension given, the last six months of 1959 when the company agreed to a

concession of a reduction of the price of 20 cents a ton.

Q. Do you recall how much loss Tennessee Consolidated had in that six months of operation?

A. Yes, sir.

Q. How much?

A. We lost $93—$96,000.

Q. Operating loss?

A. Operating loss in the last six months.

Q. Why were you not able to obtain the productivity?

Mr. Rayson: If the Court please, we object to the statement of loss for any period of time by the testimony of the witness. We believe that this could be shown by competent financial records of the company and not by generalization of the witness.

The Court: I believe that would go to the weight of the testimony. Overrule the exception.

Q. Why were you not able to attain the requirements with regard to productivity under this contract?

A. Absenteeism was one of the main factors and I feel that at this time the men took a complaisant attitude.

2686 Mr. Combs: (Interposing) Now, we object to his feeling about what the men took on a complaisant attitude and we object to that answer and move to strike.

The Court: Sustained.

Q. Mr. Callis, did you seek to obtain some different form of mechanization to meet the requirements of productivity?

A. Yes, sir.

Q. What was this, describe this.

A. When in the first six months of 1959, when we realized that we were going to have to do something to try to save this valuable contract, we searched for the most productive machine known to the coal industry that would fit that seam of coal.

This resulted in the purchase of a Compton twin auger.

To be able to auger this seam of coal we had to go into

the stripping business, and so we developed a contour stripping and augering operation. We set it up under Whitwell Coal Corporation, bid separately to TVA but were permitted under the terms of the T4 contract to add the productivity of this mine operating on properties contiguous to the Coal Valley Mine T4 contract to arrive at the ultimate productivity of the T4 contract.

Q. Of course, the contract would speak for itself
2687 in that regard?

A. Yes, sir.

Q. We would have to defer to the language of the contract. But did you obtain an award at TVA for this stripping and augering?

A. Yes.

Q. In the name of Whitwell Coal Corporation?

A. Yes, sir.

Q. Did you acquire additional machinery?

A. Yes, sir, we purchased the Compton twin auger, a Bucyrus-Erie 52B 2½-yard shovel, a 38B 1½-yard shovel, a D9 caterpillar bulldozer, and several other small allied pieces of equipment to complete this mining operation machinery.

Q. Was your stripping and augering successful on that property up there on the mountain?

A. No, sir.

Mr. Combs: Now, we object and move to strike whether it was successful or not, that's a pretty big generalization.

The Court: Sustained.

Q. Describe the nature of the seam of coal and the terrain with respect to stripping and augering in this field. Does it accommodate itself for it or describe it.

A. Some portions of the contour at the 1800-foot
2688 level did accommodate this type operation, other portions of it did not. The seam generally we found pitched in an upward direction as it came to the surface.

We were able to take in most cases two cuts but in many cases only one cut, normally 50 feet wide.

We would cast the over burden and rock to the right, uncovering the coal. We would then dip the coal out. This would leave the seam exposed to the high wall and the auger machine would come behind and bore horizontally into the seam of coal with 30-inch diameter augers, twin augers, two of them, augering the coal much in the same manner as the carpenter cranks his bit to bore a hole.

Q. Was this operation abandoned after a period of months?

A. Yes, sir.

Q. Did you have any trouble in connection with your stripping and augering phase of the contract?

A. Considerable trouble.

Q. Will you describe that?

A. Whitwell had not operated as a mine producer since 1947. This was 1959.

Q. Was Whitwell a deep mine company before that?

A. Yes. We had no experienced personnel in stripping and augering. Augering had, to my knowledge, had not been done in Tennessee. Now, contour stripping had

2689 but we were not experienced in it.

The first thing we did was to search for a superintendent to run this operation. We settled and hired a Mr. Ike Blevin from in the area of Crossville.

Q. Would you go ahead and state what trouble you had?

A. The trouble we had involved the fact of wages on the strip mine contract for this area.

Q. What was your trouble in that regard?

A. We made a search of what UMW operations were actually paying for shovel operators of equal size shovel and auger operator rates and set up this operation paying the wages that were being paid at similar stripping operations in Tennessee that were under the United Mine Workers contract.

When we established—

Mr. Combs: (Interposing) We object to that, we don't think that is competent.

The Court: Overruled.

A. After we established this scale of wages we then proceeded to hire first the local people to give them an opportunity for work, although there were only one or two that could possibly qualify as a shovel operator. Mr. Norman Meeks qualified, but there were very few technically trained people that could man this equipment.

2690 We had to reach out up on the plateau in the area of Monterey where there were competent operators.

In the Compton auger machine we used local people because this was new and we had the manufacturer train local people to run the auger.

We signed the United Mine Workers contract for the Whitwell Coal Corporation to cover this operation.

Just before starting, we were all set and ready to go, we had a contract with the Oman Construction Company and brought a D9 bulldozer in to open up the initial surface at the 1800-foot level to expose the seam of coal. The expression, I think used, is that is where we "sumped in" to get on level ground into the side of the mountain.

We also used this bulldozer to prospect. The operator of this bulldozer was a member of the AFL-CIO and we had contracted with the Oman Construction Company and they came on the job. A picket line went up and they demanded that this operator join the United Mine Workers.

Well, it was, frankly, none of our business, so we stayed out of it. The ultimate end was the man did join the union to keep down that disturbance.

Q. Do you recall how long the dozer was—

Mr. Combs: (Interposing) We object to the characterization that "he joined the union to keep down the disturbance". We don't think this is competent anyhow,

2691 a jurisdictional question and we object.

The Court: Very well, sustained.

Q. Do you recall how long the dozer was held up over there?

A. Mr. Rowntree, I would say several weeks, there was just so much going on.

Q. All right. Did you have any more trouble?

A. Yes, sir.

Q. What was this?

A. The district officials mailed to me a copy of strip rates for District 19 called "The Green Book". This was established—they had established rates there that were quite different and quite higher than the rates that the men were working under and we were paying them 40 cents and the men were working along and then this came up and then the men struck and demanded the rates of "The Green Book".

We submitted to arbitration. We mutually agreed with the district officials to establish an escrow account and pay the difference between what we were paying and what was in "The Green Book" and then went to Washington to the International offices to arbitrate the matter.

Q. How long did this take?

A. It took quite awhile.

Q. Did you finally have to pay "The Green Book"?

A. Yes, sir.

2692 Mr. Combs: I ask counsel, not to interrupt, but is "The Green Book" the same as the "Blue Book" that is in evidence here?

The Witness: They rejected "The Blue Book", there is no strip rates in that.

Mr. Combs: You are talking about another contract?

The Witness: No, sir, I am talking about "The Green Book", is District 19 strip rates. There is no strip rates in "The Blue Book".

Mr. Combs: It's a different exhibit?

Mr. Rowntree: A different exhibit.

Mr. Combs: But this is not in the record, "The Green Book" is not in the record?

Mr. Rowntree: "The Green Book" is not in the record, "The Blue Book" is, the underground rates.

Q. Does "The Blue Book" apply to any stripping rates?

A. No, sir, not in Southeast Tennessee.

Q. Now Mr. Callis, after the T4 contract—Was the Whitwell Coal Company contract, the T12?

A. T12.

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2693 Q. Mr. Callis, do you recall any event occurring in November of 1959 while you were filling the last few weeks of that T4 contract?

A. Yes, sir, there was a work stoppage.

Q. I show you a telegram, a copy of a telegram, and ask you if you can identify that.

A. Yes, sir.

Q. Was that telegram sent?

2694 A. Yes, sir.

Q. Who was it sent to?

A. Mr. J. W. Ridings, President, UMW of A District 19, Middlesboro, Kentucky.

Q. Will you read the telegram?

A. "The Coal Valley Mine at Palmer." Excuse me, this is sent from Tracy City, Tennessee, dated November 20, 1959, to Mr. J. W. Ridings, President.

"The Coal Valley Mine at Palmer is on strike, and the Whitwell auger and strip operation paying the highest wages in southern Tennessee is also on strike. Both affected companies are signatory to the UMW protective wage clause in the contract. No grievances have been reported to them for settlement under the dispute clause of the contract. It is imperative that you put these mines back to work immediately in order to preserve and maintain the integrity of the Agreement. All tonnage lost on this coal order is being canceled by our largest customer because

of illegal suspension of work. These coal companies are now classified undependable shippers by their customers due to the stoppages of work that they have had. The failure of meeting shipping schedules due to illegal suspension of work damages the coal companies and they must protect their rights by every means available to them. The coal companies affected want to be advised why the Mine Workers officials are permitting the work stoppage
2695 of work to exist in violation of the Agreement. It is the UMW's responsibility to compel its members to cease interfering with our operations. Please acknowledge.

"Stanlee Hampton for the Tennessee Consolidated Coal Company, Whitwell Coal Corporation."

Mr. Combs: We have no objection to the telegram to show that it was sent but we do not concede the facts and conclusions contained in that telegram.

Q. Mr. Callis, was that strike going on?

A. Yes, sir.

(The telegram referred to above was marked P282 and received in evidence.)

Q. Was any grievance presented to the company?

A. No, sir.

Q. Do you know how long that strike went on?

A. Not exactly, but several weeks.

Q. Do you know how it was terminated?

A. By agreement to arbitration of the wage rates of the Whitwell Coal strip and auger mining operation.

Q. Now, what was the result of the mechanization of the Coal Valley Mine under the plan of mechanization set up under the T4 contract?

A. It failed to achieve the goals that it was designed that were attempted.

2696 Q. Can you explain why that was?

A. Yes, sir. There were two main reasons. Work stoppages and absenteeism on the part of the workers and

failure to a degree of not being able to mechanize this mine with higher productivity type machinery.

Q. Will you comment upon the problems encountered in the mechanization of the same?

A. The main problem was trying to go in the direction of a continuous mining machine from the CLR conventional type of loading machine. This loading machine, we bought six of them and put them in with the idea of increasing the speed of the machine by accelerating the extendible head and retractable head. This failed, there was a failure on the part of Jeffrey Manufacturing Company to be able to increase the time necessary to extend and retract the head, therefore, we installed a Wilcox Miner, which is not a continuous miner in the true sense of continuous mining, but this machine was a high productivity machine and still is but it was not a hundred per cent successfully adaptable to this seam of coal for this reason: This machine eliminates undercutting and eliminates the shooting of the coal. It is a 42-inch long auger, a pair of them mounted on the front of a main housing drive of a 512 Goodman short wall machine. This machine augers into the face. The augers are adjusted to the thickness of the seam and then this
2697 machine with cutter bits mounted on the helix of the auger or the spiral cuts the coal and cores it after it penetrates into the face, it moves sideways, grinding coal out and worming it back as it goes across the face.

Due to rolly top conditions and when the top would thin down to below 27 inches, the machine could not function and it would have to be backed out and started in a new place, so due to the rolly conditions was partly due to the failure of this machine.

In the Coal Valley Mine we encountered a draw rock on the right-hand side of the mine.

Q. Is this Mine C?

A. Mine C. The mine that T4 was awarded to to produce the coal from, and not being able to maintain control

of this top after the auger extracted the coal was also a contributing factor to its failure.

Lastly, bottom conditions being of an undulated bottom, when the seam would grow and become larger than 42 inches, that was the outer limit of the height of coal that this machine could pull the coal out, as the top would roll even higher, the coal had to be hand picked down and in many cases it was impossible to pick this coal down and it became a hazard to safe mining.

The productivity went in normal, when in normal conditions provided as high as 43 tons per man.

2698 Q. Underground?

A. Underground, which was extremely pleasing to us, but again, due to these limiting factors of the treacherousness of the Sewanee seam, the test was abandoned and the machine was pulled and sold.

Q. Now, did you have any other problems in operating the CLR loaders besides the slowness of the machine advancing and retreating?

A. Mr. Rowntree, this machine was designed and built new in 1944. I was at Columbus, Ohio while they were developing this machine and saw the first machine operated on the floor of the manufacturing company while I was still in the service, therefore, by the time we got up to 1956-57, this machine, you might say, was antiquated everywhere except in the Sewanee seam because there was no other machine available that we could use as we increased the speed of the machine other parts began to fail on it. In other words, the manufacturer was attempting to upgrade the machine productivity-wise and the machine would not stand that upgrading. We encountered breakdowns.

Q. Did your rock condition have any effect on breakdowns?

A. Yes, sir.

Q. What was that effect?

A. This machine would not load rock and draw

2699 rock is a problem in the Sewanee seam. You take the coal out and that rock would mix in with the coal and would tend to tear the machine up.

Q. Now, after the termination of T4 what happened at the Coal Valley Mine, I mean after the work under the extended period stopped there?

A. Contract termination date was December 31st of '59. The mine had to be closed down because of no orders, no coal orders.

Q. How long did that condition go on?

A. We intermittently, a day or two at a time, or maybe a week we would run the mine on small orders between January 1 and March 15, which was the March 15th, was the end of the 60-day period but by mutual agreement with the district officials March the 15th was the last day under the United Mine Workers contract and all operation, all mining ceased.

Q. Did the company cancel the UMW contract?

A. Yes, sir.

Q. When?

A. Notice was sent, I believe, on January the 12th with the 60-day period.

Q. That was 1960?

A. Yes, sir.

Q. Did you have any meetings with the UMW
2700 officials with respect to a new contract?

A. Yes, sir.

Q. Did you have a meeting in Knoxville?

A. Yes, sir.

Mr. Rowntree: We will offer that telegram of November 20th, 1959, already read as the next exhibit.

The Court: The Exhibit No. 282.

Q. I hand you some papers, Mr. Callis, and see if you can identify those.

A. Yes, sir, these are my notes taken at the Knoxville

meeting with the district officials of the United Mine Workers and the company officials.

Q. What date?

A. February 22nd, 1960, at 1:00 P.M. in the Farragut Hotel.

Q. When were those notes made?

A. At the meeting.

Q. By you?

A. Yes, sir.

Q. Going through those notes, would you relate what happened at that meeting and state who was there?

A. Representing the United Mine Workers of America, Mr. Jim Ridings, President, Mr. Albert Pass, Mr. George Gilbert, Mr. Mapewood, Mr. Deaton, Mr. Waldon Shrum,
a Mr. Clarence McGovern, Mr. Bobby Banks, Mr.
2701 Duke LeCroy, Mr. Frank Scruggs, Mr. Louis Campbell, Mr. Jimmy Fults, Mr. Harvey Brown.

Q. Now, outside of the district representatives, can you briefly describe or identify those union personnel who were at that meeting, who were they?

A. Mr. Ridings was president of the district.

Q. Well, outside of the district officials, we have already identified them in this record.

A. Oh.

Mr. Combs: If the Court please, we don't mind the witness refreshing his memory from the notes, but we object to him reading those notes.

Q. That's right, Mr. Callis, don't read the notes, you can refresh your recollection as to what happened but don't read them. I mean just don't read them into the record.

A. All right.

Q. Now, who are these other representatives of the union?

A. Mr. Ridings, Mr. Pass and Mr. Gilbert were with the district.

Q. All right.

A. Mr. Mapewood and Mr. Deaton, I was not too familiar with at that time, really don't know their affiliation.

2702 Q. All right.

A. All of the rest, Mr. Shrum and all of the other members that were present were members of the Palmer local. I did not—I do not recall their exact title.

Q. Mr. Shrum, was Mr. Shrum president of the local?

A. Yes, sir, to the best of my recollection at that time he was president.

Q. Did you get who was there representing the company?

A. Yes, sir.

Q. All right. Now, what happened at the meeting?

A. This meeting was originally scheduled by Mr. Boyle telephoning Mr. Hampton and asking the simple question: Why did he cancel the contract?

As a result of the telephone conversation it was suggested a discussion-type meeting. It was originally set up for Washington and, as I recall, a snow storm hit and delayed it for quite awhile, over a week, and they talked once or twice.

Q. Let's get to the meeting.

A. Agreed to meet in Knoxville.

Q. Okay.

A. We met. The discussion in the meeting was, "Why did you cancel the contract?"

2703 We explained that we had no work, we had lost T4, the contract at TVA.

"Why did you lose T4?"

Because of the various reasons that I testified to here this morning.

Mr. Pass asked what machinery we had bought to put into the T4 contract, to put in the Coal Valley C Mine, and he was told. He was also told of the strip and auger equipment and why that was purchased and set up to work in conjunction with the T4 contract.

There then was a discussion concerning the statement made by Mr. Brown that Mr. Hampton, Beaumont and Callis would not let Mr. Roberts run the mines. Mr. Hampton objected to the statement and asked Mr. Roberts to speak for himself.

Whereupon he, he denied this and said that he was not interfered with, that he ran the mine.

Several other discussions pertaining to absenteeism and surrounding the T4 contract were made and then a discussion pertaining to a contract because of necessity somewhat different than the National Bituminous Wage Agreement was a must, it must be negotiated and arrived at to mine coal in Southeast Tennessee because of the conditions of the coal seams there.

Q. Did anything come out of that meeting in a
2704 practical sense rather than another meeting being established, another meeting date?

A. The 20 cents a ton reduction to run the T4 contract on Coal Valley Mine the last six months was brought up. The losses sustained by the corporation were told to the union and we offered Price -Waterhouse audited statements if they cared to see them to verify the losses as to the reason management closed the mine down and that the Board of Directors and shareholders of the corporation had demanded that management not extract coal from the properties at a loss, and this was an ultimatum to management from the shareholders of the corporation.

The only other important item that came out of this meeting was just what were the goals of T4 existing in the contract between the corporation and TVA and that was the minimum 14-ton per man day productivity.

This then led into an agreement that we would discuss at a future date, we would have a discussion on productivity that both sides should retire and center their thoughts on what our ideas were on what type of contract we had in